United States Court of Appeals

for the Second Circuit

APPENDIX

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United States Court of Appeals

For the Second Circuit

Docket No. 75-6080

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

against

BERNARD JAY COVEN,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VOLUME 2

JOINT APPENDIX

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BERNARD JAY COVEN, P.C.
Attorney for Defendant-Appellant
777 Third Avenue
New York, New York 10017
(212) 758-7090

SECURITIES AND EXCHANGE COMMISSION
David Ferber, Solicitor to the Commission
500 North Capitol Street, N.W.
Washington, D. C. 20549
(202) 755-4833

B P/S

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Seggos, to get more shares if you could sell more?

A We had originally told him that we thought we could sell half a million shares and I believe he indicated that if we could sell more he would make more available to us.

Q Mr. Caplin, regarding your sale of Dennison in June of 1972 is it a fact that any orders that were placed after June 14 or June 15 were subsequently canceled by Gotham?

A Yes, they were.

Q And so, in effect, is it not a fact then that your selling was completed, by the latest, June 15, 1972? I am talking about your actual sales now.

A Well, we had billed the customers, received money and then we refunded the money and subsequently canceled the shares.

Q That was for your orders received subsequent to June 15?

A Correct.

Q And so no sales were consummated subsequent to June 15, 1972, is that correct? Withdrawn.

Referring, sir, to your telephone conversation with Mr. Coven that you testified to in the latter part of June of 1972, you placed that call, is it not correct?

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A That is correct.

Q In the course of that telephone conversation did you tell Mr. Coven that Carlton-Cambridge had appeared in the Pink Sheets relative to Dennison Securities?

A I believe I did.

THE COURT: This is what part of June?

MR. DERFNER: The latter part of June. If i can ask another question we can zero in on it.

Q I believe you testified that this conversation was June 29, 1972, is that correct?

A I am not sure of the date but it was after the receipt of our letter of American Stock Transfer.

Q Exhibit 27?

A Yes, that would be around the 27th, 28th or 29. I am not sure of the dates.

THE COURT: And the question again was what?

MR. DERFNER: I will ask the question again.

THE COURT: Read it back.

(Question read.)

Q Now, Mr. Caplin, did Mr. Coven then respond in some or substance that as a result of Carlton-Cambridge's appearance in the Pink Sheets that Gotham had best stop its selling at that point?

A Basically yes, that was said. I don't think

he said I best stop our selling because we had ceased selling the stock. I believe he was surprised when I told him that Carlton-Cambridge had appeared in the Pink Sheets.

He told me something to the effect that since they were trading the stock the issue was closed and, therefore, no more stock should be sold, something to that effect.

Q You say he expressed surprise that Carlton-Cambridge had appeared in the Pink Sheets?

A I don't believe he had known prior to my telling him.

Q And he responded then, in effect, as a result of Carlton Cambridge's appearance in the Pink Sheets the issue was closed, is that testimony?

A I don't know if that was exactly the way it was said.

Q In substance?

A Yes, in substance.

MR. DERFNER: I have no further questions at this time, your Honor.

THE COURT: All right.

Mr. Jaffe.

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A By our customers.

Q You issued that first check on May 31, is that correct?

A Yes, sir.

Q Where was the check sent, if you recall?

A I believe the check was picked up personally by Jules Ziffer of Stevens, Jackson. He was to bring it to a closing.

Q Do you recall whether that was a gross check or was it a net of the commissions?

MR. BEIRNE: Objection, your Honor, on the same basis.

THE COURT: That is the check to Seggos.

MR. DERFNER: What was Plaintiff's objection?

MR. BEIRNE: I again believe that this is beyond the scope of the direct.

THE COURT: I will allow that.

Which was it, sir?

THE WITNESS: I believe it was a net check, not a gross check.

Q You say net. Was there any particular reason why it was a net check?

THE COURT: I will sustain the objection.

Q You sent that directly to Republic National

different from those persons who had purchased subsequent, rather, previous to the May 31st date?

A I had not the slightest idea.

Q You don't know?

A No.

Q To the best of your knowledge there could have been persons who were previously solicited prior to the May 31st date?

A That is correct.

Q Of your own personal knowledge you have no knowledge of new customers being solicited for Dennison Personnel stock subsequent to May 31st?

A I don't know.

Q And when you did send in this listing to Mr. Karfunkel on the 21st, you were informed that the issue had been closed and no stock would be issued without authorization from the underwriter?

A I don't believe that that letter says that the issue had been closed. It says it couldn't be issued without authorization from the underwriter.

Q Did you get authorization from the underwriter that you could receive original issue stock?

A For these two clients?

Q Yes.

A No, we did not receive that authorization.

MR. JAFFE: No further questions.

MR. DERFNER: On my cross-examination I neglected one minor area. It goes only to the witness' background.

THE COURT: We will come back to it.

MR. DAVIS: No questions.

THE COURT: Mr. Boyle.

CROSS-EXAMINATION

BY MR. BOYLE:

Q Mr. Caplin, my name is Boyle. I represent the Republic National Bank.

You were asked to look at 22A before. Do you recognize that document?

A Yes, I would like to see it. Yes, I recognize it.

Q Can you describe it, please?

A Yes, it was a delivery bill from Republic National Bank, the securities department, to Gotham Security showing that they were delivering to us 210,500 shares of Dennison Personnel, and it is signed by my brother, Joel Caplin, as having received said stock.

Q Did you receive, in fact, the certificates which you were entitled to as a result of your participation in the Dennison offering?

A Well, that is a broad question.

made the statement.

Moreover, I recall at the time we also indicated that Mr. Greco could cross-examine, ask any questions, and he elected not to at that time. The point I am raising, your Honor, is if he is giving any testimony referring to any conversations between himself and Mr. Bowes, I believe that the only one that can release him under the attorney-client privilege is Mr. Bowes himself. I do not see Mr. Bowes in the courtroom todah.

THE COURT: All right. I would believe that Mr. Bowes has every reason to know that Mr. Greco is a witness in the proceeding here. It has been indicated to him heretofore and he knows that Mr. Greco is in the courtroom when he testified.

If he had an interest in preserving any rights which were his I would expect him to be here to assert them. No one has standing to assert them in this behalf except himself and possibly his counsel, so we will proceed.

b2 Go ahead.

Q Mr. Greco, what is your occupation?

A I am an attorney-at-law.

Q Where are you admitted?

A State of New York in the United States District Court for the Southern District of New York and the Eastern District.

Q How long have you been an attorney?

A I believe I was admitted in March of 1961.

Q Where is your office located?

A 400 Madison Avenue, New York City.

Q Directing your attention to the period of May and June of 1972, at that time did youmeet or have any conversations with Gerald Bowes?

A I did.

Q Did you speak to him with respect to the Dennison Personnel public offering at all?

A The substance of my conversations with Mr. Bowes at that time were a request to represent him at a closing of the public offering of Dennison Personnel, Inc. and the representation was to be personal.

Q He asked you to represent him?

A Yes.

Q In that capacity?

A Yes.

Q How did this request occur? Did you meet with him? Did he call you or what happened?

A It was a telephonic request.

Q Did he call you?

A Yes.

Q Did you agree to represent him personally?

A To the best of my recollection. I was retained

A Yes, I did.

Q What subsequently happened?

A I had gotten a call in early June to meet with Mr. Bowes at -- I am not sure of the name of the bank, at the bank at which the closing was going to take place in connection with a closing on Dennison Personnel public offering. I at that time indicated -- it was short notice and I wasn't sure whether I could make it.

Q You said you weren't sure of the name of the bank. Was it Republic National Bank?

A That sounds like it.

Q This request to appear at the bank, you say took place in early June, is that correct, of 1972?

A I believe so.

Q Were you able to attend this meeting?

A At about 3 o'clock that day or 3:15 I left my office with Mr. Bernard Spear, who was the accountant for Dennison Personnel, I believe at that time, or the auditor, and was proceeding ward the Republic Bank when I met Mr. Bowes on his way back.

Q Did you have a conversation with Mr. Bowes at that time?

A He indicated to me that the closing had been adjourned and that he would call me again.

Q Mr. Greco, Mr. Bowes said that he was not going through with the deal, and you asked him for his reason? Is that correct?

A Yes.

Q Did he give you a reason, without saying what it was?

A Yes, he did.

Q Did you having heard that reason then have a conversation?

A Yes, I had a conversation with Mr. Coven.

Q Would you give us the substance of that conversation?

A I asked Mr. Coven his reason --

THE COURT: You can tell us anything you said to Mr. Coven.

A (Continuing) I saw no reason why Mr. Coven wanted to appear as a co-signee on the checks of this corporation.

Q Which corporation?

A Dennison Personnel, Inc.

Q What was Mr. Coven's response to that statement?

A Well, first he asked me who I was and what I was doing there. And I told him that I was the attorney for Gerald Bowes personally. Then he indicated to me

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that he thought -- he said that "If I am not going to co-sign on these checks, then Mr. Bowes should tell me why he told me on the telephone that his company was going to go bankrupt if this public offering isn't concluded."

Those were his words.

Q What was your response to that?

A I looked at Mr. Bowes and he gave me an answer.

THE COURT: In Mr. Coven's presence?

THE WITNESS: In Mr. Coven's presence.

Q What was the substance of his answer?

A He said that "I never said the company would go bankrupt." He said, "I wanted to put pressure to Mr. Coven to conclude the deal."

I thereupon entered into another discussion with Mr. Coven concerning the substance of the accountant's opinion, which seems to have been predicated upon a conclusion of the public offering, in other words, for a fair representation of the accountant's report. And then the discussion more or less terminated at that point.

Q Do you remember anything else?

MR. JAFFE: Your Honor, there was a rather long point in that answer. If the court reporter would please just read that back.

THE COURT: Yes, go back to the question

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subject?

A There was no discussion. I just pinpointed those factors out to him.

Q Just so it is a little bit clearer, did there come up in the context of the discussion whether the company would or would not go bankrupt?

A It came up in the context that I thought that the prospectus was --

MR. DERFNER: Objection, your Honor, as to what the witness thought.

MR. BEIRNE: I will withdraw that, your Honor.

Q Did Mr. Coven say anything to you which caused you to discuss the prospectus and the risk factors as you did?

MR. DERFNER: Again, your Honor.

THE COURT: I will allow it.

A What he said to me was -- it was in response to his question concerning his telephone conversation with Mr. Bowes that precipitated that discussion.

Q I think you also mentioned that you had discussions in the presence of representatives of the bank? Is that correct?

A Yes, I had general discussions in the presence of Mr. Dallal, and then he was later joined by Mr. Lytle,

Mr. Levin, Mr. Rega, and Mr. Coven.

Q Whom were you speaking to primarily?

A I was speaking at various times either to Mr. Coven, Mr. Rega, Mr. Levin, and on one occasion Mr. Lytle.

Q Would you describe the substance of that conversation? What was said by the various parties.

MR. JAFFE: Could we have specification as to which party?

Q Well, begin at the beginning. Who was the first party you spoke to?

A Well, Mr. Coven was the first party I spoke to on that matter I have already testified to. Then I received word, I believe, from Mr. Spear, the accountant, that there was approximately $260,000 -- I don't recall the precise figure -- in the escrow account, and I said to Mr. Coven, "You cannot close anyway today, there is no money in the escrow account; there is not enough Money in the escrow account."

And that precipitated a discussion.

At that point I asked Mr. Dallal if he were certain that was in there, and he said, "Yes."

Q Then you said what you just testified to to Mr. Coven?

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A Yes.

Q When you said that to Mr. Coven, was anyone else present and listening?

A Mr. Levin.

Q At this point was the bank's representatives listening?

A I don't think so.

Q What did Mr. Coven say to you when you made that statement about the money in the account?

A Well, in fairness, Mr. Coven and Mr. Levin disagreed with me as attorneys. There was a disagreement on the interpretation of the law. Mr. Levin and I had a discussion. He was pointing to the prospectus, from a page in the prospectus indicating that as long as there is a sale of a minimum number, where does it say that a minimum of $300,000 has to be deposited in the escrow account. And I remember telling Mr. Levin that --

Q Excuse me. Was Mr. Coven still there?

MR. JAFFE: Objection to interrupting the witness in the middle of an answer.

MR. BEIRNE: I am sorry, your Honor.

A (Continuing) I remember telling Mr. Levin that I didn't want to cite them with him now at a closing and review all of the exhibits in connection with this

closing, which would include the escrow agreement, the underwriter's agreement and all the other documents. It would take a good afternoon. But that I was just basing my opinion on my experience and a natural reaction to an escrow which did not contain, at least, the minimum funds on deposit at closing.

Q My question is, was Mr. Coven present while you were having this discussion with Mr. Levin?

A I don't believe so. I think he was strolling in the background.

Q You indicated originally then you had a difference among attorneys, with Mr. Levin and Mr. Coven. What did Mr. Coven say on the subject?

A He said, "We could close net. It is done all the time."

And I said, "Yes, but only after the minimum funds are on deposit." And he just disagreed with me and indicated his disagreement.

Q Do you remember what else, if anything, he said?

A I think he said he thought I was crazy.

Q Now --

A At this point you just refreshed my recollection. I said, "How do you know all the shares have been sold? The fact that the escrow does not contain

the minimum is a red flag to me, anyway, that the shares may not have been sold.'

Q What was his response to that?

A Well, Mr. Levin chimed in -- well, before Mr. Levin, Mr. Rega got very angry and he started to scream at me that I was calling him a liar. And I told him I was just trying to do my job and nobody is calling hi a liar. Then Mr. Levin and I had a discussion concer whether or not the shares had been sold, and I told him that he better be damned sure if he closes this that th s hares are sold.

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Q Is this then the conversation with Mr. Levin that you testified previously --

A This conversation with Mr. Levin was in the presence of everybody.

Q But you then had a conversation with Mr. Levin that you testified to previously which was not in the presence of everybody?

A The earlier conversation, yes.

Q The earlier conversation?

A Yes, it was an earlier conversation.

Q You mentioned Mr. Rega. Did Mr. Rega say anything to you after you told him you were just doing your job?

THE COURT: Told him what?

MR. BEIRNE: I think the witness testified that he informed Mr. Rega that he was merely doing his job and he wasn't calling him a liar.

A That was in front of everyone. Another thing I want to say in fairness, I don't question the fact that there was a misunderstanding -- not a misunderstanding, that there was a difference of opinion between the attorneys, all three of them, concerning that aspect of the escrow agreement.

There was a discussion on the law. I don't remember

ticket or other document exchange?

A I did not see any.

MR. JAFFE: If I may, your Honor, I object to this line of questioning since we have evidence in the record as to when in fact the stock certificates were exchanged and listed some particular things up to it.

MR. BEIRNE: I won't drag it out, your Honor.

THE COURT: All right.

Q Were any checks given in payment for any shares of stock of Dennison?

A To who?

Q To anyone. In other words, did a closing occur in the sense that money was paid for this stock?

A Not in my presence and not to my knowledge.

Q Was there any discussion as to whether the offering would continue?

A It was my distinct impression throughout the entire closing, based upon --

MR. DEFFNER: Objection to what his distinct impression was.

THE COURT: See if you can get it the other way around.

Q Now, sir, did you form an impression, yes or no?

A Yes.

MR. JAFFE: I object to any testimony as to impressions. We are trying to get facts here.

THE COURT: So far the objection is overruled.

MR. DERFNER: We are getting an impression as to what, your Honor?

THE COURT: We will see.

Q Now, sir, will you tell the court what if any statements made to you or in your presence lead you to make such an assumption?

MR. DERFNER: I don't wish to belabor this but we have testimony that he formed an impression. This can be an impression of anything.

THE COURT: Do you want him to state what his impression was?

MR. DERFNER: I don't know. The question was does he have an impression. He can have an impression as to anything.

THE COURT: That is true. We will take it, recognizing that deficiency. We will take it for the time being.

What if anything did you hear or see and on the part of whom which caused you to draw any conclusions or impressions about anything on the question of whether the offering was to be continued or not?

THE WITNESS: There was a discussion between Mr.

Bowes and Mr. Coven, a running discussion, up front. In other words, at the outset when we were talking about co-signing checks, etc., and I had heard more than once during the course of that afternoon that the offering is going to be completed in full.

THE COURT: Who said that?

THE WITNESS: I know Mr. Coven said it. I can't state that I heard Mr. Rega say it or Mr. Levin. I would have to say that the only one I recall saying that was Mr. Coven.

MR. DERFNER: Could you just have now the answer read back as to what Mr. Coven allegedly said?

THE COURT: All right.

(Answer read.)

Q Just to clarify the record, sir, what do you mean by completed in full?

A The closing we were attending was a first closing and that there would be another closing wherein the full amount of the offering, the maximum amount, would be closed.

Q Was Mr. Rega present when Mr. Coven made this statement?

A I don't recall.

THE COURT: Mr. who?

MR. BEIRNE: Was Mr. Rega present when Mr. Coven

made the statement.

THE COURT: Thank you.

Q Mr. Greco, did there come a time when you learned that an after market had opened in Dennison Personnel?

A Yes.

Q When did you learn of that?

A I received a phone call from Mr. Bowes.

Q Can you fix this phone call in time? Do you remember when?

A It was at least two or three weeks after the closing.

Q When you say the closing, you mean the meeting at the bank which you just testified to?

A Yes.

Q After receiving this phone call from Mr. Bowes did you do anything?

A At that time?

Q Yes, sir.

A I am not certain. I am not sure what I did. I only know what I told Mr. Bowes.

MR. DERFNER: Your Honor, I would like to know or get a clarification, if the testimony that the witness has given regarding a telephone call from Mr. Bowes is being offered for the truth, that is the truth that Mr.

MR. JAFFE: No further questions, your Honor.

MR. DAVIS: No questions.

THE COURT: Mr. Derfner?

MR. DERFNER: Thank you, your Honor.

CROSS EXAMINATION

BY MR. DERFNER:

Q Mr. Greco, did you ever work for the SEC?

A Yes, I did.

Q When was that?

A 1962 to 1965.

Q Did you have occasion to work on public offerings in the course of your employment with the SEC?

A No. Investigation of public offerings.

THE COURT: You did work on investigation of public offerings?

THE WITNESS: Yes, sir.

Q Also, Mr. Greco, prior to April of 1972 were you ever counsel for Dennison Personnel, Inc.?

A Yes.

Q When was that?

MR. BEIRNE: Objection, your Honor. It is beyond the scope of the direct. We started with the May-June period.

THE COURT: I will allow it.

A To the best of my recollection, I was retained by Dennison Personnel in December, 1969.

Q Did there come a time thereafter when you ceased representing the corporation?

A Yes, there did.

Q When was that, to the best of your recollection?

A I think the spring of 1970. There was a registration statement on file, and the underwriter had gone bankrupt, and at that point my special representation for the public offering and my regular monthly representation abated, although I was consulted periodically on specific matters thereafter.

Q But at the time that your representation abated you were no longer counsel to Dennison Personnel? Is that correct?

A That is correct.

Q Now, referring to the meeting in June of 1972 at the Republic National Bank, did you ever tell Mr. Bowes to leave that meeting prior to its being terminated?

A Are you saying in the presence of others or confidentially?

Q Did you ever direct him in the presence of others to leave that meeting?

A No, I did not.

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Q And if I asked you did you ever confidentially ask him to leave that meeting, would you invoke the attorney-client privilege?

A Yes, I would.

Q I believe you testified that Mr. Bowes had stated in substance that he wanted to put pressure on Mr. Coven to close the offer? Is that correct?

A The choice of terms was not correct. What I meant is that he wanted to hasten a conclusion of the matter.

Q Did Mr. Bowes relate to you in Mr. Coven's presence what he told Mr. Coven to hasten the conclusion of the matter?

A His precise words, do you mean?

Q To the best of your recollection?

A Something to the effect that, "I want to save my business."

Q And if he didn't close soon he would not be able to save his business? Was that the impression that he conveyed?

MR. BEIRNE: Objection. Characterization.

A I think that is what he did say. I didn't draw any impression from that.

Q Is it your testimony, then, Mr. Bowes in sub-

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MR. HECHMAN: On June 2, your Honor, 1972.

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stance told Mr. Coven that he had to close shortly in order to save the business?

A I would say yes.

Q Mr. Greco, did there come a time subsequent to June of 1972 that you again became counsel to Dennison Personnel?

A Yes.

Q Approximately when was that?

A I believe in August.

Q Could you be any more specific than that regarding the date?

A I may have a retention letter in my file. I believe I do.

Q Do you have anyth ing in court today that would refresh your recollection as to when you again became counsel for Dennison Personnel?

A No.

Q Now, during the hiatus between the time that you ceased representing Dennison in the spring of 1972 and the time when you again became counsel for Dennison, were you representing Mr. Bowes personally?

A No, I was not.

Q But you did represent Mr. Bowes at the meeting in June at the Republic National Bank? Is that correct?

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to see whether or not it contained language clearly requiring that the $300,000 be deposited in the account before the minimum segment of the offering could be closed?

THE WITNESS: I'm sorry?

(Question read.)

A Yes.

Q Did you find such language in the prospectus?

A Again, it was a matter of interpretation. I thought that the language so specified that it was incumbent upon the escrow account having a minimum of $300,000 in it.

Q Could you read to me the language on the cover of the prospectus which you intepreted to require that the $300,000 be deposited in the account?

MR. BEIRNE: Objection. The witness did not say he was relying upon the cover.

MR. BOYLE: Mr. Beirne is correct.

Q What portions of the prospectus did you review in coming to this interpretation?

A We discussed the cover of the prospectus.

Q Did you read the entire prospectus?

A At that time, no.

Q Do you recall reading or referring to any other portion of the prospectus, other than the cover?

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A Yes, I do.

Q Do you specialize in any particular market?

A All over-the-counter stocks.

Q Mr. Morris, when did you first hear of a stock called Dennison Personnel?

A I believe it was a few months before it came.

Q Can we fix an approximate point of time when you first heard of it?

A March, April, I couldn't be for sure.

Q You say when it first came, what do you mean?

A It was mentioned to me that an underwriting was being brought by Carlton-Cambridge.

Q Assuming the underwriting became effective in April of 1972, does that help you in any way to fix more accurately approximately when you first heard of the issue?

A I believe it might have been at that time or maybe a month or so before. I really couldn't say.

MR. JAFFE: Your Honor, the witness speaks very low. Can you ask him to speak up?

THE COURT: Yes.

Q Mr. Morris, can you tell the court how you first heard about Dennison Personnel?

A Well, in my capacity as a trader we deal with Carlton-Cambridge who had a lot of retail business. They had

brought out a few underwritings.

I believe it was Mr. Rega who had spoken or mentioned the fact that they were coming out with another one. It was a penny deal. My firm deals mainly in penny stocks and I showed an interest that I would be interested in trading it.

Q Did Mr. Rega indicate the name of the stock?

A Yes, I believe he mentioned it was Dennison Personnel.

MR. JAFFE: Can we get a time on that, your Honor?

MR. HECHMANN: Your Honor, I believe he fixed it as closely as possible to some time in the area of April of 1972.

THE COURT: Is that your recollection of the time?

THE WITNESS: As ar as I can recall, your Honor, I really couldn't say for sure.

THE COURT: All right.

Q When you spoke to Mr. Rega was this in person?

A No, I believe it was on the phone.

Q Do you recall if he said anything else concerning Dennison Personnel during that initial conversation?

A No, not that I recall.

Q Mr. Morris, subsequent to this initial conversation did there come a time when the subject of Dennison Personnel

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was mentioned to you again?

A No, I think just about a day or two before the stock came is when I had spoken to him about it again.

Q Let's focus on that. When you say the stock came, what do you mean?

A In other words, whether or not the deal would be closing soon. I think I might have spoken to him to get a date approximately and I believe it was said the next day.

Q Are we talking about a separate distinct conversation or the same initial conversation?

A This is after I found out about the issue itself.

Q Approximately how long after you first heard about the issue itself did you discuss Dennison Personnel?

A I would say about a couple of days before it came. It should be around June.

Q Around June of 1972?

A Yes.

Q With whom did you discuss Dennison Personnel?

A I think it was Joseph Rega.

Q Was this conversation in person or by telephone?

A I believe by phone.

Q Do you recall if you called Mr. Rega?

A I couldn't swear to it. I don't know whether he had called me or I had called him in a conversation of other

business but it was mentioned. 371a

I wanted to know when the deal would be closing and I believe the answer was given to me "The next day or the following day," or something to that effect. That is why I submitted a listing at the time.

Q To the best of your recollection, at the time of this second telephone conversation can you recall -- limiting ourselves now to Dennison Personnel -- what Mr. Rega said and what you said, to the best of your recollection?

A You are talking about a few days before the stock opened?

Q Yes.

MR. DAVIS: Objection. The witness testified that he wasn't sure that he spoke to Mr. Rega. If the question is rephrased as to whomever he spoke to I would have no objection to it. Simply as to that portion I object to.

Q To the best of your recollection, during the second telephone conversation, with whom did you speak?

A I believe it was Mr. Rega.

Q Do you recall again what Mr. Rega said to you and what you said to Mr. Rega concerning Dennison?

A I think I wanted to ascertain whether or not the deal would be coming in the near future and I believe he said

it would be in a day or so and, therefore, I entered a listing card.

Q Could you explain to the court what you mean when you say you submitted a listing card?

A Well, every stock that is traded in the pink sheets before it can be in the pink sheets has to be submitted through a card. It's this card that I entered.

THE COURT: When you say has to be, is that --

THE WITNESS: M.S. Wien & Company would be a market maker in this particular stock.

THE COURT: Is that the requirement of your firm or is that a requirement that is brought on your firm, this listing?

THE WITNESS: That is the only way you would be able to get in the sheets, your Honor. In other words, you wouldn't know if you traded in it if you didn't.

Q Do you recall anything else, concerning Dennison, being said during that second conversation?

A No.

Q Do you recall if Mr. Rega asked you to make a market in Dennison Personnel?

MR. JAFFE: I object, your Honor, leading question.

THE COURT: Yes, it is leading.

MR. HEGHMANN: I believe we have exhausted the

was a discussion about trading. What was the discussion and with whom?

THE WITNESS: I believe it was with Mr. Rega to ascertain whether or not the stock would be trading in the near future.

THE COURT: Who wanted to know?

THE WITNESS: I believe I did.

THE COURT: You called him or did he call you?

THE WITNESS: I couldn't recall, your Honor.

THE COURT: You did tell us you couldn't recall. I think you said you might have been talking about something else.

THE WITNESS: Yes.

THE COURT: Dennison came up.

In any event, it was discussed.

THE WITNESS: Right.

THE COURT: And you expressed interest in trading it?

THE WITNESS: I know the issue was to be closing soon because I had expressed an interest in trading the stock. It was just a question of what the date would be. I believe it was it was in my conversation with Mr. Rega that it was ascertained it would be the following day so I, therefore, submitted a listing card that the deal would be closing the following day.

THE COURT: Don't go into the operation of your mind. Just look at it. That sheet may help you remember. See if it does. Then if you can, give us your best recollection.

THE WITNESS: Well, if this is the way it appeared, I would assume that 6/1 is when I first spoke with him, and then if I did, my first trade was on 6/5, I would assume it is the morning of 6/5 that I actually spoke to him and confirmed the closing.

MR. DAVIS: Same objection.

THE COURT: Yes. Objection sustained.

Q Mr. Morris, if a bid appeared in the Pink Sheets dated June 2, 1972, on what date would that bid have been submitted?

A The day before.

Q Now, the Pink Sheets themselves are dated June 2. What does that indicate?

A Still the day before they pick up the listings.

Q The listing is picked up the day before and published the next day?

A Yes.

Q Which date would be on those sheets, the previous day when the bid was submitted, or the following day?

375a

A The previous day.

Q So if the Pink Sheet at the bottom reads June 2, when would that bid have been submitted?

A June 1.

Q Mr. Moris, do you recall when your first trade date was in Dennison Personnel?

A I believe it was June 5.

Q Prior to the first trade you executed in Dennison Personnel did you double check to make sure that the issue had closed?

A Yes.

Q How did you do that?

A I called up Carlton-Cambridge. I believe I spoke to Joseph Rega.

Q To the best of your recollection can you tell us what was said during that conversation?

A I believe he told me the deal was closed and ready, free for trading, and I, therefore, made a market in the stock.

Q Mr. Morris, do you recall what the size of the first order was?

A It was a sale. I don't recall the exact amount of shares.

Q Do you recall what the price was?

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(Answer read.)

THE COURT: I would like you to speak a little louder. Act like you were outside trying to hail a taxicab. Let these lawyers and all of us hear you.

THE WITNESS: Yes.

Q Mr. Morris, you have indicated that you had received a prospectus for Dennis Personnel?

A Yes, sir.

Q Prior to your first trade had you received any other information on Dennison Personnel?

A Other than the prospectus, no, not that I know of.

Q Did you know how many shares of Dennison Personnel had been sold?

A Well, I know it was a 6-million share issue at 10 cents. That was stated on the prospectus.

Q At the time of the first transaction do you know how many shares had been sold?

A I assumed that there were also when the deal was stated to me that it was closed the whole issue was sold.

Q Now, in executing this initial transaction on June 5, was M. S. Wien left with any type of position, either long or short in the stock?

A Yes, it was short 37,000 shares.

Q Did you subsequently cover any part of that short?

A On that particular day or following?

Q Did you cover it on that day?

A No, sir.

Q When was your next transaction in Dennison Personnel?

A My next transaction was the following day. I purchased 20,000 shares from Carlton-Cambridge at the price of 13 cents.

Q Do you recall the circumstances of that transaction?

A No.

Q Do you recall who called whom?

A No, I couldn't recall for sure.

Q Do you recall hwo the price wasset for that transaction?

A I might have been laying the market 13 bid; I might have been shorting 13 bid. I could not really say for sure.

Q When you say laying the market --

A In other words, I might have been quoting 13-17; they might have come in and offered it to me, or

I might have gone to them and showed them a bid for the stock. I really couldn't say.

MR. DERFNER: A gentleman has entered the courtr-room. Is he a witness?

THE COURT: No, he is an attorney.

MR. DERFNER: I didn't object before. I didn't know where Mr. Heghmann was going. I would like to make application to strike the witness' twstimony that he assumed that the entire issue had been sold. There is no foundation for it. His assumption at this point is not relevant.

MR. BEIRNE: I disagree. He was told the issue was closed or was closing.

THE COURT: Overruled.

Q Mr. Morris, in this second transaction where you purchased the stock from carlton-Cambridge at 13 cents, do you recall with whom you transactioned business?

A It might have been Joe; it might have been Lucille.

Q Do you recall with whom the deal was made?

A Not specifically. I am sorry. I couldn't.

Q Mr. Morris, do you recall independent of that document any transactions with Carlton-Cambridge in July' 1972?

as to how the price was determine?

A Just from this I would just that I was quoting the stock, laying out my particular market, was offered stock on my market, purchased it, and finding it bid higher away, I sold it out at a profit.

Q Is that how you normally trade? Is that how you normally trade any stock?

A Yes, I would try to buy low and sell it at a profit, if I could.

Q MR. Morris, do you know what a when issued market is?

A No, I don't believe so.

THE COURT: How about when, if and asked?

THE WITNESS: I have a rough idea, your Honor, As to when the actual stock certificates are delivered.

THE COURT: You mean, when issued?

THE WITNESS: In other words, when the certificates are issued. I couldn't say for sure. I believe.

Q Now, the market that you were making beginning on June 2 of 1972, was that a when issued market?

A No.

THE COURT: Beginning when?

MR. HEGHMANN: On June 2, your Honor, 1972.

THE WITNESS: I didn't start trading until June 5th.

Q When you first submitted your bid into the Pink Sheets, was it for an as and if issued market?

A Regular market.

Q Mr. Morris, at the time that you first submitted your indication into the Pink Sheets, did you know that the new issue was still being sold?

A I don't understand the question.

MR. JAFFE: Objection, your Honor.

(Question read.)

MR. HEGHMANN: Your Honor, perhaps if I withdraw the question.

Q Mr. Morris, at the time that you submitted your indication in the Pink sheets, did you know if the issue had been completed?

A Because my initial submission was just a blank listing, then when the deal was closed I would actually submit a trading market. When I had submitted that listing, I knew that the market still had not closed. just a blank listing.

Q Did you subsequently learn that it had closed?

A Then when I learned it had closed I decided

Q Now, when you placed your first bid in the Pink Sheets, which appeared on June 2, 1972, at that time you had no knowledge as to whether or not the issue had closed?

A Right.

Q You had no intention of making any trades whatsoever until such time as the issue had closed? Is that correct?

A Right.

Q And if the issue hadn't closed you would have withdrawn your bid?

A There was actually no bid. In other words, there was no firm market yet. There was no market whatsoever. It was just like an indication to whoever looked at the sheet I would be trading this particular stock when it closed.

Q So that when, as and if this particular issue closed you would trade? Is that correct?

A Yes.

Q During the latter part of MAY 1972, early June, 1972, in all of June and July of 1972, did you ever call Bernard J. Coven and speak to him about Dennison Personnel?

A No, sir.

Q Did Mr. Coven ever call you and speak to you

about Dennison Personnel? 382a

A No, sir.

Q Isn't it a fact that you do not personally know Mr. Bernard J. Coven?

A True.

MR. DERFNER: Thank you.

I have no further questions.

MR. BOYLE: No questions.

Mr. Morris is not listed on the Commission's list of witnesses as giving testimony against Republic. I think the reason is obvious. I have no questions of the witness.

BY THE COURT:

Q As a trader are you required to be licensed by the SEC?

A The NASD.

THE COURT: Anything further of this witness?

MR. JAFFE: Yes, your Honor, may I have my prospectus back?

THE COURT: Mr. Beirne?

Mr. Heghmann?

MR. HEGHMANN: No further questions.

THE COURT: Step down.

(Witness excused.)

MR. DAVIS: My recollection would comport with that. I was present.

THE COURT: All right. I will allow it. That is page 36, lines 14 through 20.

MR. HEGHMANN: Continuing at the bottom of page 36, by counsel for the plaintiff:

"At this time I will ask the reporter to mark for identification five items. Each individual item is a deposit slip -- well, is a photostat of a deposit slip, and attached to that is a photostat of a check. The deposit slips are dated May 19th, June 7th, June 7th, June 8th, and June 9th of 1972.

I would ask the reporter to mark these as Plaintiff's Exhibit 1AE respectively, for identification."

Your Honor, I would merely note at this point for the record that those exhibits which were marked at that day are part of what is now Plaintiff's Exhibit 17 in evidence. And that the reporter's markings appear on the backs of the relevant checks and deposit slips that appear as part of that exhibit now.

THE COURT: All right.

MR. HEGHMANN: Turning now to page 38 at line 19:

"Q Mr. Santoriello, I realize this is a copy. But in looking at the exhibit, can you identify whether

or not that is your signature on these checks?" And the reporter's notation follows "Checks handed to witness."

"A Yes, that is my signature on these checks.

"Q Mr. Santoriello, do you recall writing any of those checks?

"A I recall signing these checks only.

"Q Mr. Santoriello, in connection with the Dennison Personnel offering, what would cause you to issue these checks?

"A A directive.

"Q From whom?

"A Mr. Rega.

"Q Do you recall what Mr. Rega said to you?

"A No.

"Q Is it your recollection though that these checks were signed by you at Mr. Rega's direction?

"A Yes.

"Q Now, would you issue -- do you recall if you issued those checks on the date that Mr. Rega directed you to issue them?

"A I don't recall the date. If anything, I get a directive and it is acted upon immediately, even from a director.

"Q And the director in this case was Mr. Rega?

"A Yes."

Page 40, line 11:

"Q As part of this directive, did Mr. Rega instruct you as to the amount to issue the check in?

"A Yes.

"Q Were these checks drawn on the regular checking account of the firm of Carlton-Cambridge?

"A Yes."

MR. JAFFE: Where are we going to now?

MR. REGHMANN: Page 44, line 19.

MR. JAFFE: I would like to read the next part in, your Honor.

THE COURT: All right.

MR. JAFFE: Starting at line 19, page 40 by Mr. Reghmann:

"Q At that time do you recall -- now, this is again in May and June of 1972 --

"A Right.

"Q Do you recall how many checking accounts the firm had?

"A I don't recall but there was more than one."

May I have another moment -- well, what line on 44 are you going to start with?

MR. REGHMANN: 19.

MR. BEIRNE: Resuming at line 7 on page 15:

b4

"Q Do you recall what your allotment was?

"A A hundred thousand shares.

"Q Did you reach that figure?

"A Yes."

At this point, your Honor, I propose to page 16, line 5:

"Q Did there come a time when you stopped soliciting indications for the new issue of Dennison?

"A Yes.

"Q And do you recall approximately when that was?

"A Some time in June of '72.

"Q Okay.

Do you recall why you stopped soliciting indications?

"A We were told to stop.

"Q Had you reached your maximum?

"A Yes, a hundred thousand; right.

"Q Did you reach that prior to the time that you were told to stop?

"Mr. Brown: Do you know?

"The Witness: I do.

"A Yes.

"Q Did you attempt to sell more than your maximum?

"A Yes, I did."

MR. BEIRNE: At this point, your Honor, I propose to go to page 17, line 7:

"Q How did you attempt to go beyond the one hundred thousand-share allotment?

"A I asked my branch manager.

"Q And what was his response?

"A The maxium had been done.

"Q Did he indicate to you that you cannot sell any more shares?

"A Yes.

"Q When he said 'the maximum,' was be speaking of your maximum, the 100,000 shares you were given?

"A Yes."

MR. MAHONEY: Objection. he is asking the witness to read the mind of a third party.

THE COURT: Yes.

MR. BEIRNE: I think the question is looking for a verbal indication. The word "indicate" is used, but in the context of the questioning and especially the following question, "When he said," I think what is clearly being sought is conversation, rather than mental impressions.

MR. MAHONEY: Your Honor, they talk about two

ms

I would like to point out again on the Manor situation. I think that also, in answer to your question, is where the bank did not insisst upon the gross proceeds. If the bank had insisted upon $300,000 and somebody had come up with a check for $40,000 or so which did not really represent a submission of funds by a purchaser, we might very well have a different case; we would, in fact, have a different case. But where the bank settles for less than the gross amount -- of course, that is one of the points I am making -- this alleviates the difficulty from the point of view of those who would evade the rule.

THE COURT: Do you envision that assuming the records had not been destroyed, assuming that everything that Mr. Boyle has said and interpreted as occurring did occur in that fashion, do you envision a situation in which a bank serving as escrow agent might very well have verified by one means or another, that given the facts in this case, a minimum of 3 million shares were sold, the amount of funds on deposit in the escrow account were less than the cost of the 3 million shares by virtue of an actual deduction from that amount of commission and expenses, do you envision that that would be quite possible in the banking business?

MR. BEIRNE: I think it would, your Honor,

nominees.

THE COURT: Isn't it possible that the bank could do everything that is required by the rule and be in full compliance with the rule and yet the fraud still occur?

MR. BEIRNE: Absolutely, sir.

THE COURT: If the plaintiff is concerned that a bank wittingly or unwittingly contributes to a situation which promotes fraud, that perhaps the rule needs to be re-evaluated in its present requirements of those serving as escrow agents?

38T5 MR. BEIRNE: Your Honor, again I do believe that the existing rule handles the situation. Yes, it is true that the rule could be made more specific and we could set forth a number of things which you should do. But there are other provisions of the Securities laws that are a lot more vague than this one and those provisions have been just fine on the ground that the devices for evading the various statutes and so on change from time to time and new and never-thought-of-before things arise.

That is the rationale for 10(b)(5), which is very vague.

THE COURT: Isn't that the kind of rule or regulation that applies more directly to broker-dealers and registered representatives, rather than those peripher-

referred to in P46 represent shares for which there were paid confirmations, are you referring to the total of 1,723,855 shares?

A I think that was his question.

THE COURT: What is what you understood the question to be?

THE WITNESS: Yes.

THE COURT: And that is the figure you had in mind when you answered it?

THE WITNESS: I know that the total on the memo there were paid confirmations for the whole total on the memo which comes to the two million.

THE COURT: All right.

CROSS EXAMINATION

BY MR. BEIRNE:

Q Mr. Kolano, did you count all the Dennison confirmations that were received in the Dennison offering?

A Yes.

Q Was there any record that you could look at in order to determine how many shares were sold?

A Just the copies of the confirmations.

Q There was no running total kept of them?

A Yes, there was a running total kept but that would not have been as accurate as the confirmations themselves.

Q So you physically counted all the Dennison confirmations for customers of Carlton-Cambridge, is that correct?

A Yes.

Q Do you remember approximately how many confirms there were?

A Well, only from looking at the memo. You mean how many confirms or how many shares?

Q Well, how many pieces of paper were there approximately, do you remember?

A I would have to guess. I don't know. There were very, very many because they were in small lots.

I don't know. I would guess maybe 2,000, 1,500 to 2,000. That is a guess, I don't know.

Q How long did it take for you to count them?

A If I did it myself it probably would take about half a day and then double check it. It might take a better part of the day. Usually there is help.

Q Did you do it yourself in this instance?

A I probably did, yes.

Q Do you think you counted them by yourself?

A I think so, yes.

Q Did you use an adding machine or just how did you go about it physically?

A You have to use an adding machine.

Q When you had completed your count what did you do at that point?

A I would have it verified by somebody and see that it checked out. I would check it against my running sheet to see that the moneys checked out against the number of shares and then I would pick out all of those that specified "Send certificate," and then I would make up the list that was sent to the transfer agent.

Q Do you remember when you would have counted these or when you did count the certificates, what the date was?

A I don't remember offhand, no.

Q Do you remember if it was June or May of 1972?

A I think it was in May, I am not sure.

Q On the confirmations, were they stamped paid or did they have any indication that the customer had paid for the stock?

A Yes, they were stamped paid.

Q Were all of the confirmations that you counted, did they have a paid stamp on them?

A Oh, yes. They would have to be paid or they wouldn't be considered paid.

Q So they were paid at the time you counted them, is that correct?

A Yes.

Q What would this indicate? Would this indicate that the funds had been received by the firm from the customer?

A Either funds had been received or there was sufficient credit in the account.

Q When funds were received from the customer do you know where the funds were deposited?

A No.

Q You don't know what bank account they would be deposited in?

A No.

Q Mrs. Kolano, showing you again P46 in evidence, that letter which you signed, of course, is dated June 15, 1972.

Do you remember how long before that letter you had done your count?

A No, I don't.

Q Would it be more than a week?

A It's not likely that it would be more than a week.

Q You think it was within a week of writing that letter?

A I really can't say. I don't remember. It probably was within a week.

Q Let me ask you this then: once you indicated that

name, is that correct?

A That leads me to ask the other question then.

There are other a million that were not put in street name. Can you remember any reasons for treating those that way?

A I think it's a matter of easing the back office operation. I don't really know what happened in this case but a lot of times if you have certificates in customers' names and then they sell, then you need stock powers. It's a lot more work for the back office.

The reason may have been sort of divide the work load, make it 50-50.

Q Did you make the decision then as to which certificate or which customers would have the certificate in their own name and which wouldn't? Did you make that decision?

A Only insofar as reaching the number of shares. I believe Mr. Rega decided how many totally should be left in street name.

Q Did you count certificates for those shares that were left in street name or only for those that were for the name of a particular customer?

MR. JAFFE: Objection. You are talking about confirmations, aren't you?

MR. BEIRNE: Yes, I am sorry.
THE WITNESS: Would you repeat the question.

MR. BEIRNE: I will withdraw the question.

Q Other than this letter did you make any notation of total figures when you finished your count of the confirmations?

A No, other than the regular work sheet I would have no other notation.

Q What did you have? An adding machine tape?

A You mean as a back up of this letter?

Q When you counted the confirmations?

A Yes.

Q Did you keep that or did you pass that on to somebody?

A I would have thrown it out after the letter was typed. I would have just kept a copy of the letter and then used this to count the certificates when they came back.

Q Now, when you passed on the information after you had finished your count, did you indicate to Mr. Rega or anyone else how many customers should have stock in their name and how many should have it in street name?

A No. He told me to put a million shares in street name, and then I did it and that would be the end of it. I wouldn't go back to him and tell him it is done.

Q Did he tell that after you had done your count?

A Did he tell you what?

Q To put a million shares in street name?

A He probably gave me the number. It wouldn't be in my area to determine how many to put in street name and how many to put in customers' names.

Q Now, what was your total of your count of the confirmations? Total number of shares?

A Well, I don't recall. It would have to be the total of these two numbers.

Q Could it have been 1.7 million shares?

MR. DAVIS: Objection, your Honor. Conjecture.

THE COURT: No. I will allow it.

A I don't understand the question.

Q I will rephrase it.

You have indicated that after you did your count that Mr. Rega informed you to put a million shares or so in street name? Is that correct?

A Yes.

Q And you have indicated -- and the exhibit, of course, indicates -- that certificates were to be issued for customers in the denomination shown and that this list should total 1,723,855 shares.

Now, my question to you is, do you remember

whether your total count was 1,723,855 shares?

A It's a long time ago. I don't really remember. But I'm sure it was not, because it had to be the total of those two numbers.

Q What I am asking is, is it possible that that was your count and then Mr. Rega added on the 1 million to be shown in street name?

A No.

Q So you believe that your count was the total 2.7 million shares?

A Yes.

Q Do you remember that?

A No.

Q So your basis for so testifying is the letter?

A Yes. I wouldn't have put that in the letter if it wasn't the case.

Q Who drew up that letter?

A I did.

Q You drew that up?

A Yes.

Q Were you given any instructions as to drawing it up?

A No.

Q You wrote that letter by yourself?

A Yes, I would have compared the number that I got from the confirmations against the total number on the work sheet.

Q Do you remember whether the work sheet accurately reflected the number of confirmations that you had counted?

A Yes.

Q It did?

A Yes.

Q Now, that work sheet in addition to the number of shares, did it also indicate the amount of money received?

A Yes.

Q Do you remember whether the work sheet showed the proper amount of money received at that time?

A Yes. I don't remember any of this, but I know the system and the amount of money would have to tally against the number of shares. It is a cross check.

Q And do you remember, bearing in mind that the stock was 10 cents a share, whether it tallied properly or approximately?

A Yes.

Q Now, again, what is your best recollection as to who actually did the counting of the confirmations? Was it you personally or did you have help?

A I don't remember. I probably did. There is a good chance if I was really busy at the time I may have asked somebody else to do it. But still the total would have to tally against the work sheets.

Q Your recollection is that it did tally?

A Yes.

Q Now, what about the work sheets? What happened to the work sheets?

A It's the same situation. I put them in the file and put them downstairs.

Q They are no longer at Carlton-Cambridge?

A No.

Q Mrs. Kolano, did you personally make entries on the work sheet that you have mentioned?

A Yes.

Q Were you responsible for keeping that record?

A It was the way I did it, yes.

Q And you actually were the person who kept that work sheet?

A Yes.

Q When money came in in payment for Dennison stock in that offering, what did you receive? In other words, how did you find out about it?

A The bookkeeper would take all the checks. She

T4 THE COURT: Are you saying, Mrs. Kolano, that the 1,723,000-odd shares referred to in this letter to Mike Garfunkle, P46, includes shares which were sold by Stevens Jackson?

THE WITNESS: No.

MR. BEIRNE: I will tell you what I was getting at, your Honor. I asked Mrs. Kolano about the odd number of shares that were put in street name. In other words, it's 145 shares more than an even million. She indicated that she thought it might have had something to do with the fact that the other broker, Stevens Jackson, had sold an odd number of shares and I was continuing on that line.

THE COURT: All right. Overruled.

Q Mrs. Kolano, do you remember Mr. Rega saying anything to you about the other broker, Stevens Jackson?

A I don't remember but I think he probably came in and asked me to call them to see how many shares they had sold and I don't remember calling them either but I probably

b2 did.

Q Do you remember whether you then told Mr. Rega how many they had sold?

A I must have.

Q Did he then tell you how many shares to put in street name?

Q They were basically clerical employees?

A Yes.

Q Prior to the writing of this letter, P-46, to American Stock Transfer, had you spoken to Mr. Karfunkel over at American Stock Transfer?

A You mean on Dennison?

Q Yes, on Dennison.

A I don't remember whether I did or not. I must have talked to him on other issues, because, otherwise, I wouldn't address him like that. But I don't recall speaking to him on Dennison.

Q Did you tell him this letter was coming, do you remember?

A He may have called to ask for a list. Maybe I told him, "I will have it to you within a day or so."

Q Do you recall that happening?

A No.

Q Do you recallwhether you told him how many shares you had counted prior to the time you sent that letter?

A I don't remember.

Q Mrs. Kolano, do you remember anything about this odd number of shares, 145, in other words, as this letter sets forth, 1,000,145, are issued in street name?

A I think it was because the other broker did an

odd number of shares, or we may have. Many customers buy odd numbers.

Q Now, when you say the other broker, whom would you be referring to?

A Stevens, Jackson.

Q Again, it was Mr. Rega who told you to put this number of shares in street name?

A Yes.

Q Do you remember him saying anything about the other broker, Stevens, Jackson, and what they had sold?

MR. JAFFE: Objec tion, your Honor, beyond the scope of the direct.

MR. BEIRNE: I don't think so, your Honor.

THE COURT: Are you saying, Mrs. Kolano, that the 1,723,000-odd shares referred to in this letter to Mike Garfunkle, P46, includes shares which were sold by Stevens Jackson?

THE WITNESS: No.

MR. BEIRNE: I will tell you what I was getting at, your Honor. I asked Mrs. Kolano about the odd number of shares that were put in street name. In other words, it's 145 shares more than an even million. She indicated that she thought it might have had something to do with the fact that the other broker, Stevens Jackson, had sold an odd number of shares and I was continuing on that line.

THE COURT: All right. Overruled.

Q Mrs. Kolano, do you remember Mr. Rega saying anything to you about the other broker, Stevens Jackson?

A I don't remember but I think he probably came in and asked me to call them to see how many shares they had sold and I don't remember calling them either but I probably did.

Q Do you remember whether you then told Mr. Rega how many they had sold?

A I must have.

Q Did he then tell you how many shares to put in street name?

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A Probably.

Q Do you remember whether Mr. Rega, after determining how many shares Stevens Jackson had sold, actually added that amount of street name stock to your total, isn't that what really happened?

MR. JAFFE: I object, your Honor. She has already answered that question several times, your Honor.

THE COURT: I will allow it. Go ahead.

A Would you repeat the question.

(Question read.)

A No.

Q But you think he told you how many shares to put in street name after you had determined what Stevens Jackson had sold, isn't that your testimony?

MR. JAFFE: I object, your Honor, he is characterizing the testimony.

THE COURT: The question was asked previously in just about those terms and was answered already.

MR. BEIRNE: I am almost too late, but I notice there are two witnesses, I think, present in the courtroom.

MR. JAFFE: One witness has a very limited purpose here, your Honor. It's Mr. Luongo, the owner of 81 Home Place. Other than that there is nothing else regarding Dennison.

MR. JAFFE: I don't know if any of the other counsel have any cross or anything first.

THE COURT: That is correct.

MR. DERFNER: I have no questions.

MR. BOYLE: I have some questions, your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. BOYLE:

Q Mrs. Kolano, my name is Boyle. I represent the Republic National Bank.

Do you have any present recollection of any of the names of the purchasers who did not have stock certificates registered in their name?

A No, I don't.

Q During the course of this trial Mr. Robert Mulcahey appeared and said that he purchased Dennison in the original issue.

Do you have any recollection as to whether or not he received a stock certificate or whether or not he was included in the batch of people for whom certificates were registered in street name?

A I don't recall the name.

Q Changing the name but directing the same question to you, do you have any recollection concerning Edward

Vialonga?

A The name sounds familiar. It may be just because he is a customer. I don't recall anything in connection with Dennison.

Q How about Steven A. Kahn?

A No.

Q I show you what has previously been introduced in evidence as 22C, a delivery ticket that was sent to Carlton-Cambridge, prepared by the Republic National Bank.

Attached to it, I am afraid, is a lengthy schedule indicating the various registrations for the securities of Dennison Personnel delivered to Carlton-Cambridge.

I would like you to review this and see if you can find the names of Edward Vialonga, Steven Kahn or Robert Mulcahey, all three of whom were investor witnesses in this trial.

The names are circled here on my list, if that will be of assistance to you in trying to find them.

A No, they are not on the list.

Q The names aren't on the list?

A No.

Q If I told you that Mr. Mulcahey, Mr. Vialonga, and Mr. Kahn each testified that he purchased shares of Dennison Personnel, would the fact that their names were not

on this list, 22C, cause you to disbelieve their statement that they purchased those shares?

A No.

Q In other words, they were part of the shareholders for whom stock was registered in street name?

A Yes.

Q Are you familiar with a customer of Carlton-Cambridge, and this is going back now to June of 1972, by the name of Nagel, account number 8224?

A No.

Q I am afraid I am going to have to burden you again, Mrs. Kolano.

I hand you what has been marked as Exhibit 36B in evidence which is the trading ledger for Carlton-Cambridge, the first page of which shows trades for June 20, 21, 22 right on through the end of June.

The first trades, the first sales consummated by customers of Carlton-Cambridge, were by a customer named Nagel, the second one Florchinger, the third one was named Konig, the fourth one was O'Keefe, and the fifth one was Alotta, and these sales occurred between June 20th and June 22nd.

Let me backtrack for a moment.

In determining which customers would take the

security in street name did you attempt to pick out the customers that you either knew to be active traders or whose reps were the type that you would expect their customers to be traders?

A Yes.

Q Now these are the first five people to sell shares of Dennison Personnel from their accounts in Carlton-Cambridge and I hand you again 22C and I will leave this list in front of you showing the names Nagel, Forchinger, Konig, O'Keefe, and Alotta, and ask you if you can identify any of those names on document 22C.

A Konig was on here, I saw him before.

Q That was not a sale. Starting with Nagel, whether it's mister or not, N-a-g-e-l.

A Henry is down here.

Q I didn't go down that far. Mr. Henry sold shares on the 23rd.

Mrs. Kolano is correct, his name appears there and when I found someone who was listed I figured I had gone far enough. He is the sixth seller of Dennison.

A I don't see any.

Q You don't see any of those names?

A No.

Q Is it unusual for securities to be registered

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in street name?

A Is it unusual?

Q Yes.

A No.

MR. BOYLE: Thank you, no further questions.

THE COURT: Anything else?

MR. BERGER: Yes, your Honor.

MR. DAVIS: Yes, your Honor.

I have to admit, before I start, that some of my questions are somewhat outside the scope of direct, but they bear on the questions that your Honor asked Mrs. Kolano herself.

THE COURT: All right.

CROSS EXAMINATION

BY MR. DAVIS:

Q Mrs. Kolano, do you have more employees now under you as office manager at Christian-Paine than you had at the time of the Dennison Personnel offering at Carlton-Cambridge?

A Yes.

Q Approximately how many more employees do you have?

A I think we have about three more.

Q Were these taken on because of an expansion of business?

in your account, you don't need them, your bank statement proves you don't need them, we can't dispute that because they didn't need them, they always had the funds there, but Republic should have said "Take $41,000 even for a day," and could we have gotten their check and endorsed it and given it back? The insignificance of the question magnifies itself when we start propounding these hypothetical questions.

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As long as we know where the funds are, as long as contraty to the Commission's initial allegation the funds weren't needed for Carlton to conduct its business, to say that somehow or other we had to get these funds and to attempt to indicate that this would have changed anything, it wouldn't have changed a thing.

THE COURT: All right. Do you want to say anything further on it?

MR. BEIRNE: No, your Honor. I repeat the fact that the bank, we feel, was obligated to collect the full amount and not having done so certain risks arise and I think we went over that at length on Friday.

THE COURT: I think you conceded also when we had that discussion that the prospectus itself did not reflect that that was one of the requirements imposed upon the bank, the prospectus called for three million shares to have been sold.

MR. BEIRNE: The cover page of the prospectus provided for the bank to hold the funds until three million had been sold. Pages 15 and 16, according to undisputed fact number 29, provided that it at least three million of the offered shares were not sold and paid for within the maximum 90 business day selling period that all moneys would be returned.

That is on page 15 and 16 which is a summary of the underwriting agreement and the section in question goes on to refer the reader to the full underwriting agreement. But the phrase "and paid for" is used on pages 15 and 16 of the prospectus.

THE COURT: Was it not the plaintiff's opportunity at the time that it submitted for review by the SEC to require that the words "and $300,000 gross proceeds from the sale thereof be on deposit in the appropriate accounts"?

MR. BEIRNE: I certainly have to concede that we had that opportunity. But interpreting the escrow agent's opportunity as we do, we would feel that that is implicit in the language. But I would have to admit that it could have been clarified.

THE COURT: While that might well have been the plaintiff's interpretation, isn't the question, the key question, what the prospective investor knows or could know

to you? I will show it to you, if you have difficulty recalling the precise words.

MR. BEIRNE: At this point I would like to point out that it just couldn't be clearer that Mr. Jaffe is doing belated cross-examination. He is clearly running through the meeting of the due diligence paragraph by paragraph.

MR. JAFFE: I called him as my witness.

THE COURT: You called him as your witness, it is true, but if that is an objection to the last question, I will sustain it.

Q After the due diligence meeting you continued to supervise the offering of Dennison Personnel; is that a fact?

A No, I did not supervise its offering.

MR. HEGHMANN: Can I just have an objection as to form? If this witness is his witness could he ask direct questions instead of attempting to testify through the witness?

THE COURT: Yes, sustained.

Q Subsequent to the due diligence meeting, what did you do in connection with Dennison Personnel?

A At what point?

Q In May, during the month of May, 1972, did you take any action in connection with the new issue of Dennison

Personnel?

A The offering itself?

Q Yes.

A No.

Q Did you have any contact with any of the parties to this action?

A Yes, I did.

Q What contact was that?

A Requests for the letter of counsel who requested the due diligence meeting and a request for the bi-weekly reports of sales, which were also requested at the due diligence meeting.

Q Did you receive responses to your request?

A Initially, no.

Q When did you receive a response to your request?

A As to the letter of counsel, I believe it was May 30th or June 1st. I'm not sure of the exact date. And the bi-weekly reports of sales also began to arrive at that same time.

Q Did you examine those bi-weekly reports?

A Eventually.

Q Did you come to any decision with respect to those bi-weekly reports?

A Yes. I could not ascertain whether the three million

shares were actually sold or not.

Q What steps did you take to ascertain that?

By the way, you used the expression the three million shares. Why was it your concern to determine whether three million shares were sold?

A That was the minimum that was required to be sold for the offering to be traded.

Q When did you get concerned with respect to that point?

A When the offering was -- I'd say, when the issue appeared in the pink sheets and it did not at that time report sales showing three million.

Q Did you take any action at the time Dennison Personnel began to appear in the pink sheets?

A Initially?

Q Initially.

A No.

Q Did you take any action within a week or so after you noticed Dennison Personnel trading in the pink sheets?

A Within a week to two weeks. I'm not sure of the exact date.

Q Was that actually calling brokers that appeared in the pink sheets?

A Yes.

Q Do you recall which brokers you called?

A The brokers appearing in the pink sheets. It would have been M.S. Wien. I don't remember who else. I don't know if there was anyone else.

Q Would KFM Securities also have been called?

A If they were in the sheets during that time.

Q Would Todd & Company, also have been called?

A If they were in the sheets.

Q Would Advest & Company also have been called?

MR. HEGHMANN: Perhaps if he shows him the pink sheets it would refresh his recollection.

THE COURT: Why don't you do that?

MR. JAFFE: I will show him that which has been marked P54, which is a copy of what I believe to be blue sheet questionnaires sent to all the broker-dealers that initiated trading in Dennison Personnel.

THE WITNESS: Your last question as to Advest -- to the best of my recollection Advest was not a market maker in the stock, so they would not have been called as far as their market making opportunities or activities were concerned. I'm not sure whether KFM was a market maker or not.

Q You have P54 in your hand; is that correct?

A Yes. This does not indicate to me why of the other

you take with respect to that information?

A I sent white questionnaires, investor questionnaires to customers of Carlton-Cambridge.

Q Did you also send white questionnaires to the customers of Stevens, Jackson, Seggos?

A Yes.

Q Did you receive responses from these questionnaires?

A Yes.

Q About how many responses did you receive?

A I do not know.

Q Can you give an estimate?

A At least 200, I believe.

Q And upon reviewing these questionnaires, what action did you take?

A I recommended that a case open. I should say a formal order be issued.

Q And what was the purpose of the formal order?

A To give the staff subpoena power.

Q To do what?

A To investigate the offering and sale and market activity of Dennison Personnel.

Q And what was the basis of your recommendation, if you recall?

A The trading in Dennison Personnel and the remarks found within the white investor questionnaires we received.

Q Were there any remarks found in the investor questionnaire sent to customers of Stevens, Jackson, Seggos which caught your attention?

A Not to my recollection.

Q In connection with the blue questionnaire, did you ask any of the market makers to disclose the fact that you were making inquiries regarding Dennison Personnel to prospective purchasers and sellers of Dennison Personnel?

A No.

Q When the investigation began, did you call the market maker -- when you make the recommendation for the investigation, did you call the market makers then and indicate to them that there was an investigation going on in Dennison Personnel?

A It was a private investigation so I could not do so.

Q Did you subsequently, in connection with the private investigation, send subpoenas to persons who represented broker-dealers who had made a market in Dennison Personnel?

A Other than Carlton-Cambridge and Stevens, Jackson, Seggos, I don't believe so.

Q Did you send a subpoena to Mr. Shwidock?

A I'm not sure.

Q Did you send a subpoena to Mr. Preston Morris?

Let me rephrase that.

In the course of your investigation, whether it was by subpoena or by telephone request, did you make a request of a representative of M. S. Wien to appear at the Commission to have testimony taken with respect to the trading of Dennison Personnel?

A Yes.

Q What other broker-dealers did you make this request of?

A I believe the --

THE COURT: Excuse me. And when was it with respect to M. S. Wien?

THE WITNESS: Offhand, I could not say. I think it would have been in the fall.

THE COURT: In the fall?

THE WITNESS: Or the late summer.

Q The late summer of 1972 or the fall of 1972?

A Right.

I believe the principal from Dynamic Trading was asked to come in.

THE COURT: At the same time, all of these, any

As I say, I'm very poor on dates going back a couple of years.

Q To help refresh your recollection on dates, was there a meeting or gathering at the bank on an earlier date than June 12th?

A There was.

Q And was there, in fact, a meeting on June 5th where you attended, yourself and Mr. Bowes?

A There was a supposed closing which I went to and only Mr. Bowes and myself showed up.

Q And had you given those figures to Mr. Coven prior to that meeting, prior to that June 5th meeting?

A Yes.

Q And did he indicate that there would be a closing prior to that meeting?

MR. DERFNER: Objection, your Honor.

THE COURT: I will allow that.

Q Why did you go to the bank on June 5th?

A I was told that there was going to be a closing

Q By whom?

A Mr. Coven called and said there was going to be a closing at the bank.

Q Prior to June 5th?

A On that date, whatever that date was.

Q Subsequent to that date, the day that you gave the figures to Mr. Coven, did Steven, Jackson, Seggos sell any more shares of the initial offering?

A I don't think so.

Q Do you know whether any members of the selling group sold any shares subsequent to that date?

A Yes, they did.

Q And what happened? Will you relate the substance of that event, if you recall?

A Gotham Securities called me and told me they had received money for another, I believe, 30,000 shares and they were going to send me the check for it, and at that particular point I was given to understand that the issue was closed, so we got the check, they had sent the check in the mail and we sent the check back to them becau I assumed that the issue was closed and no more stock was to be sold.

MR. DERFNER: Can we fix a time for this conversation, please?

THE COURT: Yes.

A That would have been some time about the first week in June.

Q So it is your recollection that subsequent to the time you gave the figures to Mr. Coven that approx-

THE COURT: Now, in relation to May 29, when was it you told Mr. Coven how many shares had been dispoed of by Stevens, Jackson & Seggos and the other participants in the selling group?

THE WITNESS: It had to be a day or two before because the closing was scheduled for the 29th and I assumed that if the closing is the 29th, then they must have the minimum in, and when I went to the bank to go to the closing, there was nobody there but Mr. Bowes and myself.

THE COURT: I'm sorry. I found it in my notes. You are right. He did say the end of May.

MR. JAFFE: Thank you, your Honor.

Q Subsequent to that conversation with Mr. Coven, did you have occasion to look at the pink sheets of the National Quotation Bureau?

A Yes.

Q Do you recall about what date in relation to your phone call with Mr. Coven you did look at those sheets?

A Again, about the 5th or the 6th or the 7th of June.

Q Did you notice anything?

A I did.

Q What did you notice?

A I noticed that there was somebody making a market in Dennison Personnel.

Q What did you do at that point?

A At that point I was very, very surprised.

Q Besides being surprised, what did you do?

A I asked the trader if he knew anything about it and he said,"No," and I called Mr. Coven and asked him why the stock was being traded and he said, "It can be done on" -- at the time I didn't know the exact terminology, but"on and if, as and when "basis.

Q Subsequent to that time after that conversation with Mr. Coven, do you recall selling any shares of Dennison Personnel at the original issue price?

A No.

Q Do you know or do you recall any member of the selling group selling any original issue shares of Denniso Personnel at the 10 cent price?

A I couldn't tell.

MR. DERFNER: Could his answer be repeated?

THE COURT: Read the question back and then the answer.

(Record read.)

A As I said before,there was a check sent to me for a stock that had been sold perhaps previously where

the money came in after and we returned the money to Gotham.

Now, that may have been sold before and the money came in later, this I don't know. I don't know what the other brokers did.

Q But after this point it was your understanding that no more original issue shares should be sold?

A That was my understanding.

Q And, in fact, Stevens, Jackson & Seggos did not sell any?

A Right.

MR. DERFNER: Could we clarify after which point?

MR. JAFFE: I am now referring to the point after he noted trading in the pink sheets, and this has been identified as either being June 5, 6 or 7. I believe that was the testimony, your Honor.

MR. BEIRNE: Your Honor, I am going to object to the witness stating what his understanding was with respect to whether any more shares should be sold unless he specifies where that understanding came from.

THE COURT: I will sustain that objection.

Why don't you take it, if you wish, with Stevens, Jackson & Seggos and then if you wish to go beyond that, you can try to develop it.

Q Approximately what was your testimony?

A It was either the 5th or the 6th or the 7th of June, I don't know exactly what date.

Q Do you recall who was the broker that put the bid in?

A M. S. Wien & Company.

Q I belive you testified that you immediately brought this to the attention of Philip Lian, is that correct?

A Right.

Q And you also testified that Mr. Lian was surprised?

A Right.

Q Did you have any discussion with Mr. Lian about this?

MR. BEIRNE: Objection to the characterization.

MR. DERFNER: I believe that's what he did testify to.

THE COURT: No, I understood his characterization earlier on direct to be "I was surprised." He was surprised, meaning himself, the witness. That was what I understood.

Q Did Mr. Lian have any reaction to the discussion regarding M. S. Wien, as you recall?

MP DAVIS: Objection. Hearsay.

THE COURT: No. I will allow it.

Q Do you recall any reaction?

THE COURT: That is , that you observed. Did you observe a reaction?

THE WITNESS: I saw it in the pink sheets.

Q When you discussed this with Mr. Lian, were you in the same room?

A Right.

Q You were looking at him when you had this discussion?

A Right.

Q Did you observe any reaction?

A He wanted to know how come, so I called Mr.Coven and asked him why.

Q Mr. Lian didn't indicate to you that he had already know this?

A No.

Q Did you at this time undertake to call Mr.Levin?

A No.

Q Why hadn't you undertaken to call Mr. Levin?

A Because I called --

MR. JAFFE: Objection.

THE COURT: Sustained.

Q All right, you then called Mr.Coven, is that

objectionable anyway.

He is asking for the witness' conception of Mr. Coven's understanding and meaning.

He is asking for what he thought Mr. Coven's understanding was.

THE COURT: I will allow you, Mr. Derner, to inquire in terms of conversation, not into what he understood or what he understood Mr. Coven to mean.

MR. DERFNER: Fine, your Honor. Thank you.

BY MR. DERFNER:

Q Mr. Ziffer, you testified that Mr. Coven at some point told you that when three million shares were sold there would be a closing, is that correct?

A Right.

Q Do you recall, as close as you can, the approximate time that that was said?

THE COURT: He has already answered that. He said in early May.

A It was some time, as I said, in early May. I am very, very vague on actual dates.

THE COURT: We have got that.

Q Did Mr. Coven at that time say there would be a minimum closing when three million shares were sold or did he say there would be a final closing when three

A It would be most of the time an oral request.

Q Is it followed up by anything thereafter?

A Yes. By an appointment form, which is being executed by the officers of the corporation.

Q When you are retained to act as transfer agent, do you set up any sort of books or ledgers?

A Yes.

Q Would you describe those ledgers, please?

A There are ledger sheets which would have on the top of them all the names -- full name, full address, state, city and zip code, plus number of shares, date of issue of those shares, the certificate number and the number of shares.

Q Would those ledgers reflect the name in which the certificates are being issued?

A Yes.

Q From whom would that information come, the names of who the certificates are to be issued to?

A If it is a new issue it would be coming from the underwriter and if it is a regular transfer, it would be one transfer owner to another.

Q Sir, over the past three years have you had occasion to act as transfer agent for companies putting out new issues?

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A Yes.

Q Approximately how many times?

A I would say about twenty times.

Q About twenty times over the past three years?

A Yes, sir.

Q Sir, have you ever heard of a corporation known as Dennison Personnel, Inc.?

A Yes.

Q Do you recall the first time you heard of this corporation, approximately?

A Approximately about March of 1972.

Q March of 1972?

A Yes.

Q Do you recall how you came to know of this corporation?

A Well, an attorney by the name of Bernard Jay Coven told us that it would be forthcoming, a new issue, by the name of Dennison Personnel and he would like we should act as the transfer company for it.

Q Was this an oral conversation or was it a written communication?

A An oral conversation.

Q A telephone call?

A That I do not recall.

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Q Pardon me?

A I do not recall that, but it was an oral conversation.

Q What was the next thing that happened in relation to acting as a transfer agent for Dennison ?

A Well, we have furnished them an appointment form, which is a document about four -- about a four-page document which would state all the officers of the company and number of shares outstanding and the addresses --full address of all officers of the company. That has to be signed and sent back to us and at that time we start to act as the transfer company.

Q Does that appointment form officially retain you as the transfer agent for the company?

A Yes.

Q Do you recall approximately when you got the appointment form?

A I would not recall that. Before the company went public. It was prior to the company going public.

Q Do you recall when the company went public?

A Sometime in June of '72.

Q So, between March of 1972 and June of 1972, you got that appointment form sometime inbetween?

A Yes.

transfer agent for Dennison, is that correct?

A Approximately that date, yes.

Q Did you know Mr. Coven prior to that time?

A Yes.

Q Had Mr. Coven done any legal work for you?

A Yes.

Q Was he your company's attorney at that time, March 1972?

A Yes, for about six months. At that time he was doing some work for us about six months prior to that.

Q You indicated there came a time in June of 1972 when Mr. Coven contacted you again, is that correct?

A Yes.

Q And he instructed you to deliver 3 million shares of Dennison to Republic National Bank, is that correct?

A Yes.

THE COURT: 3,075,000?

THE WITNESS: 3,075,000.

Q Do you remember receiving any instructions with respect to the Dennison certificates from Carlton-Cambridge?

A Yes.

Q You do?

A We have received written instructions, about 40

Q Did you have any discussion with Carlton-Cambridge concerning the 1,000,145 shares that were being placed in Carlton-Cambridge?

A None whatsoever.

Q There was no discussion as to how that number was arrived at?

A That was the balance of whatever from the 3 million shares were left. It is quite customary that a new issue, a lot of stock goes in the name of underwriters. As a matter of fact, in some new issues the entire issue goes into the name of the underwriter and is subsequently transferred.

Q But, in any event, you believe that figure represents the balance of the 3 million over and above what you had names and addresses for?

A Yes.

Q Do you remember any discussion with anybody at Carlton-Cambridge concerning that number; for example, it is an odd number, ending in 145 shares; was there any discussion?

MR. DERFNER: Asked and answered, your Honor.

THE COURT: I will allow it.

A To the best of my recollection, no.

Q Now, again looking at Plaintiff's Exhibit 46

Karfunkel's name if they were dealing with your company in the normal course? What would be some avenues where his name would appear?

THE WITNESS: Some attorneys. He does deal with some attorneys.

THE COURT: He did?

THE WITNESS: He would deal sometimes with some attorneys.

THE COURT: What would be his functions which would cause him to deal with attorneys?

THE WITNESS: He does some outside work for the company.

THE COURT: What do you mean?

THE WITNESS: Contacting attorneys sometimes in their nature of business. Contacting attorneys and discussing with them, you know, the outside end of it.

THE COURT: No, I don't know.

THE WITNESS: He was contacting attorneys getting new issues and getting some additional business for the firm.

THE COURT: Would you say that his job at the time was akin to sales promotion on behalf of your company?

THE WITNESS: Yes.

THE COURT: To the best of your knowledge, would

he have had many dealings with Mr. Coven at that time or some dealings?

THE WITNESS: Not as far as Dennison Personnel would be concerned.

THE COURT: Other than that?

THE WITNESS: Possibly.

THE COURT: You don't know?

THE WITNESS: I wouldn't know.

THE COURT: Mr. Coven was your company's attorney then, was he not?

THE WITNESS: Yes.

MR. DERFNER: Was the answer to the question previous to the last question that he didn't know if Mike Karfunkel had dealings with Mr. Coven?

THE COURT: Yes.

THE WITNESS: He was our counselor. Mr. Coven was the counsel to us.

THE COURT: So your answer is what?

THE WITNESS: He would have some dealings with him.

THE COURT: Would?

THE WITNESS: Yes. He was counsel to us.

THE COURT: Go ahead.

Q Now, Mr. Karfunkel, you, of course, testified

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rg:mg 1 Karfunkel- cross

THE COURT: Who is Louis Karfunkel?

THE WITNESS: That's my father.

THE COURT: Mike is your brother?

THE WITNESS: Yes.

CROSS-EXAMINATION

BY MR. BEIRNE:

Q Now, referring to Plaintiff's 26 in evidence, again this piece of correspondence is addressed to Michael Karfunkel--

A Yes.

Q Now, you were responsible for carrying out the role of transfer agent in the Dennison officer, is that correct?

A Yes.

Q Do you know why that correspondence went to your brother?

A Perhaps -- I have no idea. The same thing like the Carlton-Cambridge letter, that has also been addressed to him. I have no idea why it has been addressed to him.

Q Do you know whether Michael Karfunkel was in contact with Mr. Coven during this period?

MR. DERFNER: Could we fix a time, your Honor?

A Referring to Dennison Personnel?

THE COURT: Just a moment.

MR. BEIRNE: When I said during this period, I meant June of 1972 to July.

THE COURT: All right.

A As far as Dennison Personnel was concerned?

Q No. In general.

A I might have had some contacts with him. As I indicated earlier, he was counsel to us at that time.

Q Mr. Coven was?

A Yes.

MR. DERFNER: Your Honor, I object to that question on the grounds of relevancy. I don't think it has any probative value.

I would like the question and answer be stricken. I am referring now to the question that if this witness knew if Mike Karfunkel had any conversations with Mr. Coven about things other than Dennison.

MR. BEIRNE: Your Honor, I think it has some probative value.

THE COURT: Yes, I will leave it. Motion denied.

Q One final question, Mr. Karfunkel.

Do you know why your father, Louis, answered that piece of correspondence? In other words, he signed Plaintiff's Exhibit 27.

issue whtn the time comes?

A Basically how many shares you should issue.

MR. DERFNER: I have no further questions, your Honor.

THE COURT: Anything further?

MR. DAVIS: Nothing further, your Honor.

MR. BROWN: Nothing, your Honor.

THE COURT: If not, step down, please.

(Witness excused.)

THE COURT: Call your next witness.

MR. DERFNER: Your Honor, my next witness, Mr. Ackerman, told me about five minutes ago he was going to the men's room.

If I may be excused just to get him out of the men's room --

THE COURT: All right.

(Recess.)

...

K E N N E T H A C K E R M A N, called as a witness by defendant Coven, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DERFNER:

Q Mr. Ackerman, would you state your business address,

please?

A 747 Third Avenue.

Q What type of work do you do, Mr. Ackerman?

A I am an attorney.

Q Are you an associate of Mr. Bernard J. Coven?

A Yes, I am.

Q Where did you go to school, sir?

A I went to Georgetown Law Center.

Q Where did you go to college?

A Boston University.

Q When did you graduate from law school?

A 1969. June.

Q Are you a member of any bars?

A I am a member of the New York bar.

Q When were you admitted?

A In April of 1970.

Q When did you first come to work for Mr. Coven?

A Approximately the beginning of May 1971.

Q In your course of employment with Mr. Coven, have you had occasion to work on any registrations of public issues of securities?

A Yes, I have.

Q Approximately how many, if you recall?

A To date?

A I had been involved in a few of them, doing parts of writing of the registration statement or the offering circular.

Q Do you recall at that time approximately how many you had worked on, either full registrations or Reg A's?

A Somewhere about five to ten, I would say. I had been there a very short period of time.

Q Who first brought Dennison to your attention?

A Mr. Coven.

Q Do you recall, in substance, what he told you at that time? I'm referring now to late 1971.

A I believe he indicated to me that there was an offering that we were going to do and that I should start getting acquainted with the issue.

He gave me the name of the issuer, being Dennison, and told me that if there were any calls from principals of the company, to speak to them about the offering and to begin preparing the-- well, begin preparing certain parts of the registration statement that would not require an immediate conference with them at that point.

Q Did you acquaint yourself with the offering?

A Yes, I did.

Q Did that acquaintance include review of certain papers?

A Yes. I reviewed the-- the company had commenced a public offering some time in 1970 with another-- I believe the underwriter was Robert Cea, and I was looking over that prospectus to get acquainted with the type of business that the company did and to see if I could learn anything in which to proceed with the due diligence.

Q Do you recall what the terms of the original offering were, the offering, that is, to be done by Robert Cea?

A We originally did the issue at 150,000 shares at $5. I think that theirs were 100,000 shares at $7.50. I am not 100% sure.

Q Sir, showing you now Amendment No. 2 to the Form S-1 which is part of Plaintiff's 1 in evidence, I ask you to review the cover page there and ask if that refreshes your recollection as to the terms of the original Cea offering.

A Yes, it does.

Q What were the terms of that offering?

A It was 120,000 shares at $7.50 a share.

Q Now, after you reviewed the papers, sir, do you recall what next you did?

A Well, my recollection is that I had conversations with Mr. Bowes and I believe Mr. Kennedy of Dennison

Personnel giving me certain information that I needed in preparing the prospectus.

We had a conference at some point in time before the filing-- I don't recall exactly when it was, but Mr. Bowes had come up to the office and we had a discussion.

I went over a questionnaire that we had used to get certain information using the original prospectus that we had, and using the questionnaire I tried to fill in the information that we were required to have for the prospectus and tried to update what was in the prospectus that we had been given.

Q Co you recall approximately the time of this conference with Mr. Bowes?

A Some time in October.

Q Of 1971?

A October, early November.

Q Was that the first time you met Mr. Bowes?

A I believe I met him once before very briefly. He had come up to the office and he was-- I was in my office and I was going out and he was about to leave and I was introduced to him.

Q Did you have any conversations with Mr. Bowes prior to your first meeting him, a telephone conversation?

rq:;gm 11 Ackerman-direct

A I may have. I don't specifically recall that I did, but it is a possibility.

Q In this meeting with Mr. Bowes in October of 1971, was anyone else present besides Mr. Bowes and yourself?

A Yes. I believe Mr. Coven was there for part of the conference. It was in the latter part of the middle afternoon, I would say about 4:30, 5:00, and there was other business to be done in the office, and I was basically handling the conference with Mr. Bowes.

I had prepared a list of questions which I had to have answered, which Mr. Coven didn't have to be present for at the time.

Q Did you subsequently have other conferences with Mr. Bowes?

A Prior to the filing of Amendment No. 1?

Q Yes. Referring now to prior to filing Anemdment No. 1.

A Yes, I had. He had been up to the office I think one or two times subsequent to that conference. I spoke to him on the phone several times in updating and clarifying the information that he had given me.

Q When you had questions regarding Amendment No. 1, if those questions related directly to the company, from

442a

A Yes, I believe --

Q What is that?

A It's a comment letter regarding Amendment No. 2, which is indicated here was filed on March 30, 1972.

Q Does that refresh your recollection as to when you received comment letter No. 1?

A Not to a specific date, no.

Q Approximately do you recall?

A I would say still approximately at the beginning of the year.

Q How did you learn that Lehman Bartels would no longer be the underwriter?

A I believe the circumstances of my learning of that situation was Mr. Coven indicated to me that Lehman Bartels were not going to be the underwriter any more, I believe they were going out of business, as I recall. I'm not sure that that was the situation.

Q And after learning that Lehman Bartels was going out of business and wouldn't be the underwriter, what next happened with regard to the registration of Dennison Personnel?

A Well, I believe -- it's my recollection that when I first learned of this, I was told to proceed in responding to the comment letter, working with the company and respond-

underwriting section and the underwriting agreement, also.

Q Do you recall, referring now to the comment letter on Amendment No. 1, do you recall what the comments were?

A No, not at all.

Q You have no recollection of that?

A No.

Q After you were informed that Stevens, Jackson, Seggos would be the underwriter, did you have occasion to meet with or speak with anybody from Stevens, Jackson, Seggos with regard to Dennison Personnel?

A Yes. I believe I met Mr. Seggos in Mr. Coven's office, meaning his specific office, some -- late one afternoon. It was some time subsequent to being told that he would be the underwriter. I don't know exactly when?

A Did vou have any conversation with Mr. Seggos at that time?

A Well, at that time they were having a conference. I believe Mr. Coven was there, Mr. Seggos was there and I believe Mr. Levin was there, and I had gone into the office to inquire about handling a certain matter. I was told at that time that the issue was going to be changed to a 10-cent issue, and they continued to have a conversation

or we were thinking of changing the issue?

MR. BEIRNE: Objection, your Honor. That question is both leading and hearsay.

MR. DERFNER: It is not hearsay.

THE COURT: Just a moment.

I will allow it.

MR. DERFNER: I will withdraw the question.

THE COURT: Go ahead, I will allow it.

Q Did you say anything to Mr. Bowes at that time?

A I had indicated to him that I had been in a conference, I had walked into a conference that Mr. Coven was having with the underwriter and the underwriter's attorney and that the gist of the conversation was that the underwriter felt that that was the price that would be best suited for selling this particular issue, and he was concerned about the number of shares that were going to be outstanding. I believe I indicated to him at that time that it would be necessary, first, to amend the certificate of incorporation to increase the authorized shares and that his concern with the amount of shares would be -- it wouldn't be any problem, that there would be a reverse split at a subsequent date.

Q Do you recall anything else?

A Yes. There is a gap between that conversation

what that page is?

A Yes. This is the cover page of a red herring.

Q The red herring being?

A Being the prospectus, preliminary prospectus.

Q And on the bottom of that cover page, is there an underwriter identified?

A Yes. The underwriter identified is Stevens, Jackson, Seggos, Inc.

Q And is that underwriter characterized?

A Yes. It is characterized as managing underwriter.

Q Meaning again, as it did with the previous amendment, that this issue would be syndicated?

A Yes.

I believe we -- a day or two before the letter was sent in we had a conference on it for that particular one question; that particular comment and I believeMr. Levin and myself and Mr. Coven had a conference on the response to it.

Q Would it be fair to state that Mr. Coven prepared part of that letter?

A I would say yes.

THE COURT: The letter was prepared in part by you?

THE WITNESS: Yes.

THE COURT: In part by Mr. Coven?

THE WITNESS: Yes.

THE COURT: Was it contributed to by Mr. Levin?

THE WITNESS: Mr. Levin was also aware of what the situation -- what the issue was. I believe he received copies of the comment letter and I know that I had occasion to discuss comments from the comment letter and the development of the prospectus with him. This particular occasion, in response to that particular comment which I was asked to read, I believe that all three of us sat around one night discussing the matter.

Q Where did you obtain this copy -- or who obtained this copy?

attend the closing. I saw Mr. Coven that day and asked him if the closing -- when I say I saw him, I was in my office and he was in his and I was walking through the office and I asked him when he was going to the closing and he indicated that the closing was not going to take place that day.

Q Did.Mr. Coven inform you of a new date for a closing?

A No. He didn' indicate a specific date. He said just -- he just wanted to know if I had the papers prepared, were there any other papers that had to be prepared other than the ones that already had been done which he had looked over. I told him no, but we might have to get some up to date on the telegrams for the certificates of good standing.

Q Sir, if I told you that there was an opinion of counse by Mr. Coven dated May 30, 1972, would that refresh your recollection as to whether any of the closing documents were dated?

A It would indicate to me that that was about the date that the closing was supposed to take place.

Q Would it refresh your recollection as to whether or not any of the closing documents were dated?

A No, it wouldn't.

Q Did there come a time when you attended a meeting that was termed a closing on the issue of Dennison Personnel?

A Yes. There was an eventual -- eventually -- I believe some time, June 12th or 14th, one of those two dates, there was a closing at the Republic National Bank.

Q Did you attend?

A Yes, I did.

Q Would you tell us what, if anything, you did at that closing?

A Yes. I had asked to go along. I had never attended a closing before and I wanted to see -- you know, to see what occurred at the closing. I went along to assist in making sure that the necessary parties got the necessary papers that they were to received at the closing. There were certain documents pursuant to the underwriting agreement that were to be given to the underwriters' counsel and I believe copies were given to the accountant as well.

Q Did you have conversations with anyone at that closing?

A I spoke to Mr. Bowes. Mr. Coven asked me to get the papers ready to give them to Mr. Levin and the accountant, I believe. I had to collate -- so that I had all of the documens necessary to give.

Q When you were collating these documents, was anybody working with you?

A Basically I was getting them read for Mr. Levin. He was about the only person I was really in contact with.

Q Was he working with you as you were collating these documents?

A Yes. He was making sure that he was getting all the proper documents.

Q At the closing, did you have a conversation with anyone or did anyone have a conversation in your presence with regard to the closing down of the entire issue?

A What do you mean by closing down of the entire issue?

Q The termination of the entire issue as of the closing as you had intended.

A No.

Q Did anyone have any conversation with you or in your presence with regard to trading of the issue?

A No. Not to my recollection.

Q Do you recall who was present at the closing?

A Myself, Mr. Coven, a representative of the bank -- I believe his name was Dallal and Mr. Levin was there. There was an accountant. I believe his name was Spears. I believe Mr. Ziffer was there, Mr. Rega --

Q Do you know Mr. Coven's signature, sir?

A Yes.

Q Is that his signature on the last page?

A It would appear to be his, yes.

Q Now, sir, referring to Exhibit 8, I notice it's dated May 30, 1972 on the top.

Does that refresh your recollection now as to whether any of the closing documents were dated?

A Well, I would say that the opinion was dated the 30th and it's very possible that some of the other papers might have been dated the 30th also.

Q Is the opinion considered one of the closing documents?

A Yes, it is.

Q Now, sir, do you recall why the opinion was dated May 30th, 1972?

A Well, I believe that that was the date that I was told that the closing was originally scheduled to take place.

Q Do you recollect if you brought the opinion letter with you as one of the closing documents to the closing on June 12, 1972?

A Yes. I believe I had the file with the papers for the closing in them and I put them in a folder and took

them along.

Q Would this have been one of the papers?

A Yes, it would have been.

Q Could you tell the Court why this document is dated May 30th, 1972, when the closing in fact took place on June 12, 1972?

MR. DAVIS: Asked and answered, your Honor.

MR. DERFNER: Not in this regard, your Honor.

THE COURT: I think he did answer it. The witness has indicated that he thought it was the date that tne closing was originally scheduled to take place.

MR. DERFNER: The question was why wasn't this changed. That's what I would like to get out. I believe he also indicated previously, your Honor, that there were several documents that were undated and that was because they didn't know when the closing would actually take place.

THE COURT: All right.

A It would be conjecture on my part. I would imagine it was just an oversight, forgetting to cross the date out.

Q Do you recall filling in the date of June 12 on some of the documents that had been undated?

A It's not -- not to my recollection do I specific-

ally recall that, no.

Q Do you recall if this document was mailed to any of the principals or any of the participants in the underwriting prior to June 12, 1972?

A To the best of my recollection it was not mailed to anybody before that date, no.

Q Do you recall if you delivered this to the Republic National Bank at any time prior to June 12, 1972?

A I did not personally direct it to be given to the Republic National Bank and, to my knowledge, I know of nobody who would. I believe I had possession of them in my office.

Q Did you have any conversation with Mr. Dallal of the Republic National Bank on June 12, 1972 with regard to this opinion letter?

MR. DAVIS: Objection. Irrelevant.

MR. DERFNER: No, your Honor. If I may --

MR. DAVIS: The bank is no longer a party to the action.

MR. DERFNER: I don't think that that's --

THE COURT: They are still in it.

MR. DAVIS: Yes, your Honor.

Q Do you recall the question, sir?

A No. Can you read it back to me or repeat the

condition in June of 1972? Were you involved in that at all?

A No, I don't -- I'm not even sure I'm familiar with what you are talking about.

Q You are not aware of that?

A No.

Q Do you recall the investigation Mr. Coven made in the course of preparing this letter? What was done in order to prepare it?

A I don't recall specifically what was done, but --

Q Were documents reviewed?

A Yes, I believe I had checked the minutebook and certain of the statements of their good standing were the result of certificates from the state of incorporation, which I believe is Delaware, if I'm not mistaken.

Q Did you contact any individuals and speak with them, ask them any questions concerning the preparation of this letter, do you recall?

A I believe I had certain discussions with the company about the letter and about the additional letters that had to be prepared for the closing.

Q Did you speak to any of the underwriters about it?

A I don't recall speaking to them specifically, no.

had an opportunity to file with the clerk's office but if the Court would like a copy, at this point we can give the Court a copy and if not, we will file it with the clerk and a copy to the Court.

THE COURT: Why don't you file it with the clerk and if the need arises for me to make use of it, perhaps you can make available to me the conformed copy.

MR. DERFNER: At this point, your Honor, we will call the defendant Bernard Jay Coven.

THE WITNESS: Your Honor, before I take the stand I would like to tell your Honor I have a diabetic condition and I may require some recesses to use the men's room.

THE COURT: All right.

Mr. Coven, you are already under oath.

THE WITNESS: Yes, sir.

B E R N A R D J A Y C O V E N, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. DERFNER:

Q Mr. Coven, will you state your occupation, please?

A Attorney at law.

Q Where did you go to law school, sir?

A I attended Harvard Law School, graduated 1942 and received a Master of Law degree, New York University Law School in '48.

Q When did you commence the practice of law?

A 1946.

Q What did you do between your graduation from Harvard and your entry into the field of practicing law?

A I served in the United States Air Force during World War II.

Q Sir, while engaged in the practice of law did you come to commence the practice of securities law?

A Yes, I did.

Q Approximately when was that?

A I've been in the practice of securities law approximately twenty years or more.

Q In the course of the practice of the securities law have you ever been retained as counsel to work on public offerings of securities?

A Yes.

Q Approximately how many issues have you been retained to work on?

A Twenty-five, thirty or more.

Q Were you retained by both underwriters and insurers?

A Yes.

Q Sir, we have had extensive testimony in this trial with regard to the public offering of Dennison Personnel, which is the underlying issue here. Would you tell us approximately when you first came to hear of Dennison Personnel?

A Dennison Personnel was recommended to me by--that is, Mr. Bowes of Dennison Personnel was recommended to me by a Mr. Kaplan who was associated with a big board house.

Q What is Mr. Kaplan's first name?

A Harry.

Q That is not the same Mr. Kaplan who testified in this trial?

A No, not the same Kaplan.

Q When you first--withdrawn.

Did there come a time when you spoke to or Mr. Bowes with regard to Dennison Personnel?

A Yes.

Q When was that approximately?

A I believe it was some time late in '71.

Q Did you discuss this company, Dennison Personnel at that time?

A I think it was earlier than that, about the

Q At this time you have no recollection who it was from Lehman Bartels who spoke to you in this regard?

A No.

Q Sir, did there subsequently come a time when Lehman Bartels was replaced as underwriter on this issue?

A Yes, they were.

Q By whom were they replaced?

A They were replaced in sequence first by Stevens, Jackson & Seggos and then by Carlton Cambridge. Incidentally, I might add to my previous answer as I recall it now, that in addition to Lehman Bartels getting off this issue, the company, that is, Dennison Personnel entered into informal discussions which never materialized with a personnel company from Boston, Massachusetts.

MR. HEGHMANN: Your Honor, I am not sure of the relevance. I move to strike it.

THE COURT: Yes.

Q When the amendment was filed, was there also a change in price?

A Well, I believe under Lehman Bartels' issue, it was a straight best effort deal, and in open best effort deal, and in amendment No. 2, there was a minimum maximum, a minimax deal, and I believe the price was changed from five dollars then to ten cents. I also believe that the amount

of money was changed, I believe from 750,000 to 600.

Q Are you speaking about the total amount of money to be realized from a full offering?

A Right.

Q You said Stevens, Jackson & Seggos was designated as the underwriter on amendment No. 1, as well as Carlton-Cambridge. Did you know a principle of Stevens, Jackson & Seggos by the name of Eleftherios P. Seggos?

A Yes, I did.

Q When did you first come to know Mr. Seggos?

A I would say in the fall or winter of '71.

Q How did you come to meet him?

A I met Seggos at, you might say, at a publicity matter concerning First World Corporation, downtown Manhattan in a restaurant. There was some lecture being given as to something. I don't recall.

Q And subsequent to that, did you have occasion to speak with or meet with Mr. Seggos?

A Yes.

Q And in what regard or connection were these meetings or discussions?

A Both in a business way and a social way.

Q So you and Mr. Seggos became social acquaintances; is that correct?

A That is correct.

Q With regard --

A We went to dinner often.

Q With regard to business dealings with Mr. Seggos, were there any other public issues that became effective that you worked on and Mr. Seggos was involved in?

A Yes.

Q Which corporations were those?

A The only other issue that ever become effective at Seggos was Balance Computer. That was prior to Dennison.

Q What was Mr. Seggos' relationship to Balance Computer?

A He was an underwriter.

Q What capacity did you perform in that underwriter?

A I was the attorney for Mr. Seggos on that issue.

Q Sir, did there come a time when you discussed Dennison Personnel with Mr. Seggos?

A Yes.

Q Do you recall when that was?

A Sometime prior to March 3, 1972.

Q Do you recall what you said to Mr. Seggos in that discussion?

A Yes. I invited him to become managing underwriter of Dennison Personnel.

Q. Do you recall what, if anything, was his response?

A. Well, Mr. Seggos agreed to take the issue and thereafter it was drafted to the printer at five dollars a share. Mr. Seggos then informed me that he could not or would not sell the issue at five dollars a share, and wanted the issue restructured to ten cents a share, stating it was a successful issue out west, which ten cents a share structure was successful.

Q. Prior to --

A. Just a moment. I didn't finish. I pointed out to him that I had never seen a full registration issue at the Securities & Exchange Commission and that interested him more in reducing the price and taking it that way.

Q. Prior to your discussion with regard to lowering the price of shares, did you give any consideration -- withdrawn.

Prior to your discussion with Mr. Seggos with regard to lowering the price of these shares of Dennison in public offering, did you have any discussion with Mr. Seggos with regard to the offering as it was previously structured?

A Yes. He knew it was five dollars a share. It was a printed draft as five dollars a share which was not filed, which was distributed to Mr. Seggos.

Q. Was there any discussion with regard to the

ability of Stevens, Jackson & Seggos to underwrite this issue at five dollars a share?

A. Mr. Seggos said he could syndicate this issue out easily.

Q. Did you undertake any investigation to determine if Mr. Seggos and his company, Stevens, Jackson & Seggos, had the capability to underwrite and syndicate this issue?

A. I didn't make a formal investigation, but I used my experience and, of course, I had a conversation with Mr. Seggos as to what he could do.

Q What factors did you use to determine -- withdrawn.

Did you determine that Stevens, Jackson & Seggos could underwrite the issue?

A Yes.

Q What factors entered into your consideration and formed the basis of that decision?

A We had previous experience in the participation of E. P. Seggos. That is a brokerage house he was formerly connected with and he had his own corporation, Seggos Industries, and he had two offices and led me to believe he was expanding. There was a conversion of $50,000 put into his firm, an additional $50,000. There was a statement in reference to the Pan Hellenic Assocation and he told me he had a

had a tremendous following in the Pan Hellenic Association. He told me he had placed shares in Europe. All in all, he convinced me he could be a managing underwriter.

Q Did you make any inquiries --

A I might add one other thing that the issue involved, at least a minimum portion was less than the regulation A issue which is a small, small issue. The total of $600,000 was only a hundred thousand dollars more than the regulation A issue and there was no underwriter worth his salt who couldn't do a regulation A issue.

Q What is the amount of money realized as to the Securities & Exchange Commission rulings?

A $500,000.

Q And the minimum was to be less than that?

A That is correct.

Q At or about this time, did you have any discussion with Mr. Seggos with regard to the sales force of Stevens, Jackson & Seggos?

A No. I regarded that as immaterial in this particular issue.

Q Why is that?

A Because we expected Seggos to syndicate the issues out, and secondly, I believed his contacts were sufficient to sell the issue. There were many other brokers on the

street of similar size who had to put away issues of approximately similar amounts. It was only $600,000.

Q Would you explain what you mean by "syndication" or "syndicate the issue out?"

A This is a method of selling the issue by obtaining selling groups, to sell to these selling groups who, in turn, sell to their customers.

Q So it is the selling group that does the retail selling to the customers; is that correct?

A That is correct.

Q Did you determine if Mr. Seggos had any experience as a selling group?

A Yes. As a matter of fact, this entire matter of Seggos and his experience was discussed with the Securities & Exchange Commission prior to the issue becoming effective. In a conversation had with me, by Mr. Leone or Mr. Pardee of the Securities & Exchange Commission, they requested the insertion under the caption "Underwriting experience of Seggos"on the final amendment. This didn't appear in the letter of comment but by telephone conversation. I discussed with them the application of item 16 of release 4936, and under that release and pursuant to their request, the paragraph about Seggos' experience was put into the prospectus in precisely the manner requested by the Securities & Exchang

Commission prior to the date this issue became effective.

Q Is that statement used in Plaintiff's Exhibit P-1?

A I can point that out in the letter of comment, as to this conversation.

MR. DERFNER: I believe the letter of comment, your Honor, is Coven Exhibit D-22, and I'll attempt to show it to Mr. Coven so he can explain his statement.

THE WITNESS: May I make a comment, your Honor?

THE COURT: Just a moment.

A Looking at Defendant Coven's Exhibit D-22, the letter of comment by the SEC dated April 7, 1972, in that letter of comment, no requests made with respect to Steven Jackson Seggos. However, in response to their letter of comment, and I think it is--

Q Exhibit D-23.

A --it is recited that the letter is directed to the letter of April 7, 1972 and "conversations had with Messrs. Pardee and Leone" and paragraph 12 of the second page of the letter states the paragraph under the caption "Underwriting" concerning the recent information of that.

The Securities and Exchange Commission at this point didn't think it serious enough to be required to be under the caption "High Risk Factors". It was satisfied to be under the caption "Underwriting."

MR. BEIRNE: Your HOnor, I move that comment be stricken.

THE COURT: I will strike it but I will allow you to bring out what the regulatory agency did or didn't do.

Q Mr. Coven, referring to P-1, do you find anywhere in that exhibit where the SEC's suggested language with regard to the experience of the underwriters Steven Jackson Seggos appears?

A It appears in the last amendment under Underwriting. I had a conversation, and as part of my conversation with the examiners on this underwriting, they specifically authorized me, and it is general they do so, they specifically authorized me to place that paragraph under the caption "Underwriting" and not to place it under the caption "High Risk Factor" where such a statement would usually be found.

Q Mr. Coven, do you find that statement in Exhibit P-1?

A Yes, I do.

Q Could you read that statement, please?

A "Steven Jackson Seggos, Inc. co-underwriter of this issue has only recently been registered as a broker-dealer and has had relatively no experience acting as an underwriter. However, Mr. Seggos, a principal, is experience in new issue participation."

Q Sir, where does that statement appear?

A Under the caption "Underwriting" page 15.

Q On the prospectus?

A In the prospectus, yes.

Q Did the Securities and Exchange Commission ask that appear under the caption "High Risk Factor" in this prospectus?

A No. They authorized me specifically to put it under the caption "Underwriting."

Q Mr. Coven, I believe you testified you had subsequently some discussion with Mr. Seggos with regard to lowering the price of the share on this issue, is that correct?

A That's correct.

Q Do you recall approximately when that was?

A After March 3rd, but before March 30th.

Q Do you recall if this discussion was in person or on the telephone?

A I believe this discussion was in person.

Q Where was it?

A At my office.

Q Do you recall what was said by Mr. Seggos?

A Mr. Seggos has stated he didn't believe that this issue was worth five dollars or he could sell it for five dollars. He said that he wanted the issue restructured to a ten cent issue. He said that there were a number of successful issues of like kind out in the west.

I pointed out to him that these issues out in the west were mining stocks and Regulation A is used and to my knowledge there never has been in the history of the SEC, a penny fully registered issue.

Q Did there come a time when you discussed Personnel

with Mr. Seggos?

A I believe Robert Levin was there.

Q What position did he--

A He was the attorney for the underwriter.

Q It was this discussion then when Mr. Seggos made the suggestion to lower the price?

A Yes. I think Mr. Ackerman may also have been present.

Q Mr. Kenneth Ackerman from your office?

A That's right.

Q Did there come a time subsequent to this discussion when you had an opportunity to discuss this with other persons, besides Mr. Seggos and Mr. Levin ?

A Yes, I had a conversation concerning this reduction and this issue with Mr. Gamarikian of Carlton Cambridge

Q Prior to that did you have occasion to discuss it with anyone else?

A I spoke to Mr. Bowes about it.

Q What did you say to Mr. Bowes, sir?

A I told him of the recommendation to reduce his issue to ten cents. First he told me he was very unhappy about that, that he believed that Dennison Personnel was not a penny issue. Then, subsequently, he thought it was a good idea. All Mr. Bowes wanted in the last analysis was

the issue as stated to me.

MR. HEGHMANN: Objection.

THE COURT: Overruled.

Q Sir, do you recall what you said to Mr. Bowes with regard to the change of the price of the shares of Dennison?

A I told him that I would recommend a change from five dollars to ten cents a share.

Q Did you cite any reasons for that recommendation?

A Well, I told him that Seggos wanted the change. I also believe that his company was not worth five dollars, although that was the usual arbitrary figure put on the issue.

Q Did you have any discussion with regard to the financial posture of Dennison Personnel?

A Yes.

Q What was that?

A It appears that Dennison Personnel was especially relying for operating capital on the proceeds of this issue.

Q How did that relate to the lowering of the price to ten cents?

A Well, the company's ratio for determinative purposes of what the price in stock ought to be, certainly

was affected by the fact that it had required capital problem.

In other words, tne company was not worth five dollars, and it was an arbitrary amount anyhow.

Q Going back to the discussion among yourselves, Mr. Levine and Mr. Seggos, when Seggos suggested the change in price, did Mr. Levine offer any comments with regard to this?

A Mr. Levine didn't oppose such a change.

Q Did he say anything in that regard?

A Mr. Levine was agreeable to the change. He believed, with me, that the ten cent price could be easily supported in view of the financial condition of the company.

Q Now, sir, after your discussion with Mr. Bowes with regard to the change in price, did there come a time when you had discussion with anyone from Carlton Cambridge with regard to Dennison Personnel?

A Yes.

Q Who was that?

A Mr. Gamarikian.

Q Do you recall approximately when that was, sir?

A It was sometime after March 3rd.

Q Do you recall how you came to speak to Mr. Gamarikian about Dennison Personnel?

at the offices of the Securities and Exchange Commission?

A Yes.

Q Were you in attendance at that meeting?

A Yes.

Q Sir, did there subsequently come a time when you received a copy of Plaintiff's Exhibit 30, which is a letter to Robert B. Levine, Esq., dated May 26, 1972 and signed by William Nortman for the Regional Administrator? I show you a copy of that exhibit.

A Yes, I received a copy of that.

Q What, if anyting did you do when you received that copy?

A Mr. Levine or I contacted each other and we got together to apply to this particular letter, and in addition Levine and myself called the underwriters to determine whether it was in fact true that sales reports had not been filed and we found the SEC was in error with respect to that.

Q Do you recall the date of the due diligence meeting at the SEC?

A It was prior to the effective date. I believe it was the 24th or the 25th.

Q The 24th or 25th of April, 1972, is that correct?

A That's correct.

Q Looking at Exhibit 30, the opening paragraph,

does that refresh your recollection of the date of the meeting, sir?

A Yes, April 25th.

Q With regard to the bi-weekly reports the underwriter is supposed to file as stated in the letter of May 26th, do you recall when that first bi-weekly report would have been due?

A It would have been due a week or more after the effective date.

Q Do you recall the effective date?

A April 26th.

Q Based on April 26th, do you recall when the bi-weekly report would have been due?

A I don't have the exact date. However, both Levin and myself called the underwriters and it was determined that Stevens, Jackson & Seggos had indeed filed a report with the Securities Exchange Commission and that Carlton Cambridge had filed a report to the Securities and Exchange Commission, and I asked Mr. Levin to send me a copy of what they filed. I got a copy from Mr. Ziffer, but not from Carlton Cambridge.

Q You got a copy of the Stevens, Jackson & Seggos bi-weekly report from Mr. Ziffer?

A Right. He sent me a copy.

Q Sir, I show you a copy of Defendant Coven's Exhibit 21 in evidence and I ask you if the first letter there is the copy of the bi-weekly report received from Mr. Ziffer?

A Yes, it is.

Q Does that report indicate the number of shares indicated by the selling group?

A I didn't hear that question.

MR. DERFNER: Withdrawn.

Q What does that report indicate?

This report states that 711,000 shares have been purchased of the Dennison Personnel issue.

Q When is it dated?

A May 16, 1972.

Q Who is it addressed to?

A Securities and Exchange Commission, 26 Federal Plaza. That's by Stevens, Jackson & Seggos.

Q Is there a total of 711,000 shares on this letter, sir? I am showing you now the last page.

A Yes, but that total didn't appear when it was sent to me by Stevens, Jackson & Seggos. I believe he added that number by adding it up; that didn't appear that way. He added it up.

Q Is that an accurate addition contained on this

bi-weekly report, of the number of shares?

A Yes.

THE COURT: I should tell you I have most exhibits which I can make reference to but I don't have all of the Defendant's exhibits.

MR. DERFNER: I will undertake to make copies of all the exhibits and provide them to the Court.

THE COURT: All right, as you get to them. It will be helpful.

Q Now, sir, did you subsequently get a copy of a bi-weekly report from Stevens, Jackson & Seggos, and I am showing you D-21 in evidence.

A Yes.

Q What is the date of that report?

A June 21, 1972.

Q Who is that addressed to?

A Securities and Exchange Commission.

Q What does that report say, sir?

MR. HEGHMANN: Objection, your Honor, the report will speak for itself.

THE COURT: It is in evidence. I will allow it.

A In substance it gives a list of the customers who paid for their shares up to that date.

Q Is there a total number of shares paid for as of

June 1, 1972?

A 263,500 shares are stated as paid for. Again, in this exhibit, the number 263,500 was inserted by adding up the columns. It was not received that way.

MR. HEGHMANN: Your Honor, if I may, just for the record, when these exhibits were received I believe they were received for the limited purpose showing they were received from the Securities and Exchange Commission and they were sent out in requests to questionnaires. I do not believe they were signed.

They were not introduced to anyone who could testify as to their contents or authenticity. They were received for limited purposes and here say otherwise.

MR. DERFNER: Your Honor, my recollection is they were first offered during the testimony of Mr. Seggos and Mr. Seggos said he had no knowledge of these letters and yes, they were received not for the truth of them but for the purpose of stating they were the basis upon which Mr. Grossbain sent out the questionnaires.

Now Mr. Coven has testified he received those reports pursuant to his requests from Mr. Ziffer and under those circumstances I would ask the Court to expand the basis that Exhibit D-21 was received.

THE COURT: Mainly to what?

inquiry of the letter which is P-30, he indicated yes, it did satisfy it, and no further letters of the sort of the content of that were sent out. Or, for that matter, correction of these reports or any additional information.

I recall, your Honor, at that time when I examined Mr. Glusband on these documents, he did expand the purpose for which they had been received. I don't have the exact transcript here.

THE COURT: My recollection is that the SEC through Glusband acknowledges receipt of the two documents and now we have testimony of Mr. Coven that he received it.

MR. JAFFE: Yes, your Honor, but I do point out we have had P-30 brought up and I recall Mr. Glusband said this was the material he did get a response to that and--

THE COURT: I don't think they're denying that. Go ahead.

BY MR. DERFNER:

Q Mr. Coven, did you receive these two letters that comprise Exhibit D-21 in the mail?

A Yes.

Q Do you recall the envelope that contained them, if that had any identifying markings?

A These papers were sent to me by Mr. Ziffer, on my express request to Mr. Ziffer, in a conversation I had

with Mr. Ziffer, for the purpose of assuring myself that our responsibility with respect to the Commission's letter was correct.

Q Sir, did the envelope in which these arrived have any identifying markings?

A Stevens, Jackson & Seggos.

Q You recall that?

A Yes, I do.

MR. DERFNER: Your Honor, could we expand the receipt of these, they were received by Mr. Coven from Stevens, Jackson & Seggos?

THE COURT: That's probably a reasonable inference but I'm not sure it addresses itself to the point Mr. Heghmann is making.

MR. DERFNER: Your Honor, if Mr. Heghmann is stating these letters are not dispositive of the number of shares sold, as indicated, we are not contesting that.

THE COURT: All right.

Q Sir, did Carlton Cambridge ever send you copies of their bi-weekly reports?

A I believe Levin reported back to Carlton Cambridge and sent their bi-weekly reports. I believe it was addressed to Mr. Goldberg, the head of the Regulation A Section instead of Mr. Glusband.

Q Did you ever receive copies?

A No.

Q At or about the time you received a copy of Exhibit P-30, which is dated May 26, 1972, did you have any conversations with Mr. Levin or anyone on behalf of Carlton Cambridge with regard to the number of shares that had been either indicated for or sold by Carlton Cambridge at that time?

A I had indication from Levin certainly that Carlton Cambridge had sold more than the minimum shares and that a closing had been scheduled for May 30th.

Q Now, sir, did there come a time when a response was prepared to Exhibit 30?

A Yes.

Q Do you recall when that was?

A I don't recall the exact date.

Q I show you Exhibit 31 in evidence and ask you if that refreshes your recollection as to the date.

A Yes, a few days later, on May 30th. This was prepared by Mr. Levin, I believe, and I assisted Mr. Levin on this preparation.

Q Did you sign this letter?

A Levin signed it and I signed it as having read the letter and confirming its contents. The letter of

Mr. Levin of May 30th,--

Q You're talking about Exhibit 31?

A Yes, I note the statement in that letter, the list of Carlton Cambridge was addressed "Attention: Michael Goldberg".

Q That list is the bi-weekly report, is that correct?

A Yes, that is what we understood.

Q Now, sir, about this time, you were apparently speaking with Mr. Levin about the issue, is that correct?

A That's correct.

Q Did there come a time at approximately this time, when a closing was scheduled for Dennison Personnel?

A Yes. It was scheduled and cancelled.

Q What was the date that was chosen, sir?

A This closing was planned originally for May 30th, but among other factors, the underwriters, particularly Carlton CAmbridge asked for more time. It was rescheduled to June 5th, I believe, on a temporary basis and then we scheduled it again.

MR. DAVIS: Objection. I ask the statement "the underwriters from Carlton Cambridge asked for my time" be stricken as hearsay.

THE COURT: Who at Carlton Cambridge made that

request and of whom?

THE WITNESS: Mr. Levin, basically Mr. Levin, the attorney for Carlton Cambridge told me they needed more time.

THE COURT: Application is denied.

THE WITNESS: In addition to that fact I called up the escrow account bank.

Q Now, sir, in scheduling the original closing for May 30th, 1972, were there any factors considered prior to choosing that date?

A Well, it was determined by the attorney, myself and Mr. Levin, to contact the underwriters, that they indicated at the time of fixing that date, a readiness for May 30th and we were advised to prepare for closing on that date, which my office did and Mr. Levin's office did by making up the appropriate closing papers.

Q Did there come a time, sir, when you were informed that the underwriters would not be ready for the May 30th closing date?

A Yes.

Q Approximately when was that?

A A few days or so prior to May 30th.

Q I believe you testified it was Mr. Levin who so informed you, is that correct?

A That's right.

Q At or about that time did you have any conversation with Republic National Bank, the escrow agent?

A Yes, I did, several conversations.

Q Specifically prior to May 30, 1972, do you recall what you said to Republic National Bank?

A Well on my first call there, I recall it was my first call because I had some difficulty in getting any information at all. They refused to give me information with reference to the escrow account indicating that the account was in the name of the underwriters, and they were not authorized to give information with reference to the accounts which I had no interest in. I spoke to an officer about that and--

Q Do you recall who that was?

A That was eigher Hersch or Dallal, I can't be certain.

Q Is that--

A I think Morris Hersch an officer of the bank and then I did get information as to the amounts in the escrow account and with respect to May 30th it was very apparent from the information I obtained that the underwriters were not ready to close.

Q Do you recall how much money was in the escrow

account on May 30, 1972?

A A relatively small sum.

Q I show you Exhibit P-16 in evidence and I ask you if that refreshes your recollection?

A May 30th, $65,881.

Q I believe you're referring to May 31st there.

A Well, the period was--well, it was for the $8,970.

Q As of May 30th, 1972?

A It appears that way from the bank statement.

Q Does that refresh your recollection as to what you were told by the escrow agent regarding the amount of money in the escrow account on May 30, 1972?

A I recall I was told that amount or approximately that amount.

Q What if anything did you do when you determined the amount of money in the escrow account?

A Waited for further action by the underwriters.

Q Did you have any conversation with anyone?

A Well, I continuously called up Ziffer and Lian to ask them what they were doing with reference to this issue. I spoke to them quite frequently. Mr. Ziffer assured me that things were going well. As to Carlton Cambridge, that was more difficult. I think Mr. Levin

called them more often than I did.

Q Did you have any conversation with Mr. Levin with regard to the monies in the escrow account and the closings?

A No, except that it was insufficient to close on May the 30th, as they indicated. Levin did say that, as I recall now, that Carlton Cambridge had some difficulty in collections.

Q Did there come a time, sir, when the closing was scheduled for a day subsequent to May 30, 1972?

A Yes.

Q How was that done, sir?

A I notified--

Q How was the date decided upon?

A The date was decided upon basically by Levin obtaining a date from Carlton Cambridge.

Q What date was decided upon, sir?

A --and I spoke to Mr. Ziffer.

Q What date was decided upon?

A It was basically an extension of the May 30th to June 15th. It was not a firm date but an extension date, based mainly on the collection problem that Carlton Cambridge said they had.

THE COURT: Who extended?

THE WITNESS: Carlton Cambridge basically had a collection problem. They said they had difficulty in collecting and they asked for an extension of time on the original closing they set.

THE COURT: Asked the bank?

THE WITNESS: They spoke to us. They didn't ask the bank at all. They spoke to Mr. Levin who in turn spoke to me.

MR. JAFFE: Your Honor, I object to this testimony as being hearsay and very unclear as to the source of the material. I object to it.

THE COURT: You might clarify it before we let it rest. Who said what to whom about what?

Q Mr. Coven, did you have any conversation with Mr. Levin with regard to rescheduling the original May 30th closing date?

A Yes.

Q What did you say to Mr. Levin?

A Mr. Levin told me that in his conversations with Carlton Cambridge, that they had a collection problem and they needed more time. They thought they could possibly make it by June 5th.

Q As a result of that conversation, what if anything did you do?

A I notified Bowes about June 5th.

Q Did you and Mr. Levin come to any agreement with regard to the date of June 5th?

A I also notified the bank on this so we did come to an agreement on this, yes.

Q What was that agreement?

A It was a temporary holding date. If Carlton Cambridge collected its funds, there would be a closing.

Q Now, sir, prior to June 5th, 1972, did you have any conversation with the escrow agent with regard to the monies in the account?

A Prior to June 5th?

Q Prior to June 5th, yes, sir.

A Yes, I did.

Q What was that conversation?

A As I have testified, the first conversation I had, I had a refusal as to the amount and then I was told what the amount was and I saw May 30th was an impossible closing and that was it.

Q Sir, subsequent to May 30th, 1972, but prior to June 5th, 1972, did you have any conversation with the escrow agent?

A I believe I notified the escrow agent there would be a possible closing.

Q Did you have any conversation with regard to the monies in the account?

A I don't believe I spoke to him about the money in the account in that telephone call. As a matter of fact, it may have been my office who made that call. The reason I say that is, I had another issue which became effective on May 4th, a few days after this issue and I'm not quite certain as to how that went.

Q Sir, did there come a time when the June 5th closing was rescheduled?

A Yes.

Q Approximately when was that?

A That was rescheduled a day or so before the June 5th closing.

Q How did it come to pass that the closing on June 5th was rescheduled?

A As I recall, I called the escrow agent again with reference to this matter, and there didn't appear a sufficient closing amount to consider a closing of this issue, and in addition Carlton Cambridge asked again for an extension of time for purposes of collection.

Q Did you have any conversation with anyone at Carlton Cambridge?

MR. JAFFE: Objection.

THE COURT: Sustained.

Who said what?

Q Did you have a conversation with anyone on behalf of the underwriters?

A Yes.

Q With whom did you speak?

A Mr. Levin.

Q What did Mr. Levin tell you with regard to the June 5th closing, sir?

A Mr. Levin said they were not ready to close and we better set another date, June 12th. I also told him about my conversation with the escrow agent.

Q Did he offer any reasons for the inability to close at that time, sir?

A He merely repeated it was a collection matter. Also, he had word way over the minimum was sold by Carlton Cambridge alone.

MR. JAFFE: Objection, your Honor.

A (Continuing) This is Levin stating that.

THE COURT: I will take it.

Q Sir, are you saying when you spoke to Mr. Levin with regard to the rescheduling the June 5th closing Mr. Levin stated Carlton Cambridge was way over the minimum?

A Way over the minimum but they had problem of

collection. That is, sold but not yet paid for.

Q Sir, I believe you testified that you also in this conversation, discussed with Mr. Levin, the amount of money in the escrow account, is that correct?

A That's correct.

Q What did you say to him, if you recall?

A I called the escrow agent up, and we were not anywhere near the closing amount.

Q What did Mr. Levin respond, if anything?

A Nothing, except with that information.

MR. DAVIS: Excuse me, do we have a time fixed for this conversation?

MR. DERFNER: Your Honor, I believe the testimony was prior to June 5th but subsequent to May 30th.

THE COURT: As I understand it, the last conversations occurred a couple of days prior to the June 5th scheduled closing.

THE WITNESS: What happened here, your Honor, a closing was scheduled for May 30th, then came telephone conversations delaying this closing, because of the problems encountered by Carlton Cambridge. That basically was in substance how this occurred.

THE COURT: As I understand it, the last conversation was a couple of days before June 5th.

THE WITNESS: Yes. That was a temporary, tentative date of closing and they said we needed more time and we advanced it to the 12th.

Q Mr. Coven, at the time you spoke to Mr. Levin, a couple of days prior to June 5th, was a new date for the closing decided upon?

A Yes.

Q What date was that?

A June 12th.

Q And what was the basis for deciding on June 12th, if you recall?

A Well, it appeared that extension of time was large enough to have a collection from Carlton Cambridge, certainly it was an additional seven-day period for collection, pursuant to the appropriate regulation, I believe Regulation T, and we thought that was adequate time.

MR. JAFFE: Your Honor, I object to the characterization "appropriate regulation."

THE COURT: Sustained.

Q Mr. Coven, during these conversations that you had with Mr. Levin, between May 30th, and June 5th, or a couple of days prior to June 5th, 1972, were you ever informed by Mr. Levin that Carlton Cambridge had closed its books on the issue?

A No, and I will state emphatically that it was not until the commencement of this action that I knew or learned from the complaint in this action that Carlton Cambridge had, as stated in the complaint, "Closed its books".

Q Were you ever informed by anyone from or on behalf of Carlton Cambridge, with regard to their books being closed on May 30th, 1972?

A Absolutely not.

Q During this period of time from May 30th to about June 5th, were you speaking with anyone from Carlton Cambridge with regard to Dennison other than Mr. Levin?

A I believe I spoke to Mr. Rega but not about Dennison Personnel.

Q Were you speaking with anyone from Carlton Cambridge about Dennison Personnel?

A What date?

Q From May 30, 1972 to June 5, 1972?

A No. I didn't.

I did speak to Ziffer, and the issuer and the escrow agent.

Q During these conversations with Mr. Levin, did Mr. Levin tell you Carlton Cambridge had commenced trading the issue?

A No.

Q Did anyone from Carlton Cambridge tell you they had commenced trading the issue?

A No. I didn't learn that Carlton Cambridge was trading this issue until June 29th or 30th, 1972. I believe it was the 29th.

Q Mr. Coven, have you ever had an opportunity to visit any of the offices of Carlton Cambridge?

A I have never visited the offices of Carlton Cambridge up to this moment and from the beginning of time.

Q Sir, you have testified you had discussions with Messrs. Gamarikian and Rega. During the course of any of these discussions did you discuss the internal operations of Carlton Cambridge with these gentlemen?

A I have never had occasion to discuss any of the internal operations of Carlton Cambridge.

Q Did Mr. Rega, Mr. Gamarikian, or Mr. Levin discuss with you the internal guidelines that had been set by Carlton Cambridge with respect to Dennison, which have been testified to in this proceeding?

A I never spoke to anybody from Carlton Cambridge or anybody else at any time about how Carlton Cambridge operated their particular brokerage house or what their procedures were. I regarded it at all times as none of

my business. I was the attorney for the company, not the underwriter. Certainly not Carlton Cambridge.

Q Were you informed of the 1,000 share limitation guideline in Dennison Personnel?

A Absolutely not. I never learned about that until this action was commenced.

Q Were you informed of the method of paying commissions to the brokers of Carlton Cambridge with reagrd to Dennison Personnel?

A Absolutely not; in any fashion, directly or indirectly or however remote, I know absolutely nothing to this day about the inside of Carlton Cambridge except what I learned from the papers filed in this action.

Q Sir, were you ever consulted by Carlton Cambridge or anyone in their behalf with regard to the method of depositing funds in the escrow account as it relates to Dennison Personnel?

A Absolutely not.

MR. JAFFE: At what time, your Honor?

Q During the pendency of this issue, sir.

A At no time did I have any knowledge with respect to Dennison Personnel of how or in what manner Carlton Cambridge was depositing its funds or what bank they were using and so forth. That was first learned at the June 12th

closing, when the check was presented by Carlton Cambridge.

THE COURT: We will take a recess until a quarter of.

(Recess taken.)

B E R N A R D J. C O V E N, resumed.

BY MR. DERFNER:

Q Mr. Coven, in late May, June of 1972, did you have any conversations with Philip Lian from Stevens, Jackson & Seggos?

A Yes, I did.

Q How did these conversations come about?

A I called Lian and Ziffer often to determine how they were selling the stock. They also called me.

Q And do you recall what Mr. Lian's capacity was for Stevens, Jackson & Seggos in late May and June of '72?

A At that time I didn't know his capacity. I thought he was a back office.

Q During your conversations with Mr. Lian, did there come a time when the subject of making a market in Dennison Personnel was reached or discussed?

A Yes.

Q Do you remember approximately when that was?

A The early part of June.

Q Did you initiate that topic, sir?

A Yes, I did.

Q Do you recall what you said to Mr. Lian?

A I asked Lian if Seggos was going to make a market in Dennison, pursuant to the due diligence

statement, made by Ziffer at the Securities & Exchange Commission.

Q Do you recall what was Mr. Lian's responsibility?

A He said this was a matter up to Seggos personally.

Q Did he give any indication of the present state of making a market in Dennison Personnel?

A No. Mr. Ziffer did in a telephone call he made to me.

Q Did Mr. Lian make any? I am talking about Mr. Lian.

A No, he didn't. Other than speaking to Lian and asking him how the issue was going in the last conversation, that is about all the conversation I had with him --

Q When you say the last conversation --

A In which I asked him whether Seggos was going to make a market in the stock.

MR. JAFFE: Your Honor, can we fix a time?

THE WITNESS: First week of June.

Q 1972; is that correct?

A Yes.

Q Now, sir, during these conversations with Mr. Lian, was there any discussion had with regard to M. S. Wien appearing in the pink sheets?

A Absolutely none.

Q Absolutely none, with --

A Absolutely none. There would be no reason to speak to him about it.

Q Did you speak to him about it?

A No, absolutely not.

Q Sir, from April 1971, when you were first retained by Dennison Personnel to the present time, have you had any contact or communication with M. S. Wien regarding Dennison?

A Absolutely not. I have not spoken or communicated with anyone in M. S. Wien or in connection with M. S. Wien.

Q Do you recall if there came a time in April of 1972, when Mr. Seggos left the United States?

A Yes.

Q Do you recall when in April that was?

A I don't recall the precise date, but I believe it was sometime in April.

Q Sir, who was in charge of the Dennison issue for Stevens, Jackson & Seggos in Mr. Seggos' absence?

A Mr. Ziffer was in charge. He so informed me.

Q Mr. Ziffer?

A That is correct.

Q Who appeared at the due diligence meeting on April 25, 1972 at the Securities & Exchange Commission on behalf of Stevens, Jackson & Seggos?

A Mr. Ziffer appeared.

THE COURT: Excuse me, at which meeting?

MR. DERFNER: The due diligence meeting, your Honor, in April 1972.

THE WITNESS: At the Securities and Exchange Commission.

Q Now, sir, do you recall in the beginning of June 1972, having any conversations with Mr. Ziffer regarding Dennison? Just do you recall, sir?

A Yes.

Q Do you recall having any conversation with regard to Gotham Securities, with Mr. Ziffer, regarding Gotham Securities and Dennison Personnel?

A Yes.

Q What did Mr.Ziffer say to you, if you recall?

A Mr. Ziffer told me that Gotham Securities was remitting net and he asked me if that was permissible.

Q What, if anything, did you say to him?

A I told him that depended upon the number of shares sold, that it might be permissible under certain circumstances but that Seggos was absolutely responsible for all of the funds in the event that a return was required, because Gotham was Seggos' customer, in effect.

Q When you say Seggos, sir --

A Stevens, Jackson & Seggos.

Q Did you tell him under what circumstances that would be possible, sir?

A I told him if more than the minimum number of shares were sold, that it would not really be of any concern, but I didn't have all the facts at the time.

Q Did you subsequently have another conversation with Mr. Ziffer with regard to M. S. Wien?

A Yes.

Q Do you recall approximately when that was?

A About the same time.

Q Was it subsequent to the conversation with regard to Gotham, if you recall?

A On or about the same time. I believe it was subsequent, yes. Mr. Ziffer told me that S. M. Wien was in the sheets and asked me how that could occur, since there had been no closing.

Q Referring to the pink sheets?

A That is right.

Q And also referring to Dennison Personnel. Is that correct?

A That is correct.

Q What, if anything, did you reply?

A I told them in view of the fact there was no

closing and no certificate issued and the customer's list of Dennison Personnal had not yet been ascertained, it was obvious they were in the sheets solely on a when, as and if basis and that such trading was correct, it was not illegal.

Q Now, sir, did there subsequently come a time when you had discussions with Mr. Ziffer with regard to a minimum closing of Dennison Personnel?

A Yes.

Q And were these prior to June 12, 1973?

A Yes. Mr. Levin and I notified all of the parties.

Q Did you have any specific conversations with Mr. Ziffer?

A Yes. I asked him for an indication of the number of shares sold at that time, up to that time. He told me it was 351,000, something like 351,000, and Mr. Levin ascertained that Carlton Cambridge had more than the minimum at that time, in and of itself.

Q Now, sir, in the course of --

MR. JAFFE: Your Honor, I object to that.

THE COURT: Read that portion back after 351,000.

(Record read.)

THE COURT: In its present form, that last portion is stricken.

Q Sir, at or about that time, did you have any

conversation with Mr. Levin with regard to Dennison Personnel?

A Yes.

Q What, if anything, did Mr. Levin tell you?

A He told me that Carlton Cambridge had advised him they had more than the minimum sold by themselves.

Q In your conversations with Mr. Ziffer, did you ever tell him there would be no maximum closing of Dennison?

A Absolutely not. The subject never came up with Mr. Ziffer or anybody else.

Q In your conversations with Mr. Ziffer, in the first two weeks of June 1972, but prior to the closing on June 12th, did you ever discuss with Mr. Ziffer whether Stevens, Jackson would stop selling the shares of Dennison after the closing?

A No.

Q Did Mr. Ziffer ever inform you that there could be only one closing per each issue?

A No.

Q Now, sir, prior to June 12, 1972, but subsequent to June 5, 1972, did you have any conversations with the escrow agent with regard to the escrow account?

A Yes. I ascertained the amount of the account. I'm looking at Exhibit 16, and I refresh my recollection it was over $200,000.

Q At what time, sir?

A About June 9th or so, 223,496.

Q When you ascertained this information, what, if anything, did you do with respect to the closing?

A I asked Mr. Levin to ascertain from Carlton Cambridge the balance, if any, of their collections and I was told by Mr. Levin that they would bring in at the closing an appropriate check for the required amounts, whatever they had at the time, which I believed then to be in excess of the minimum.

Q Did you have any conversations with anyone on behalf of Stevens, Jackson & Seggos with regard to the money they had collected --

MR. DAVIS: On the conversation with Mr. Levin, when was that?

THE WITNESS: Prior to June 12th.

Q Subsequent to June 9, 1972 but prior to June 12, 1972, is that when you had that conversation?

A About that time, yes.

Q Did you have any conversation with anyone on behalf of Stevens, Jackson & Seggos with regard to their deposits to subscriber's funds in the escrow account?

A Not specifically. And incidentally, I was not able to obtain from the escrow agent, although I did ask them, not able to obtain by telephone call as to whose money

actually constituted the sums which are on this. I never received a copy of Exhibit 16 from the bank. I was never able to --

Q Are you referring to which underwriter made the deposits?

A Yes. They either were unwilling or the clerical staff --

Q Now, sir, prior to June 12, 1972, did you have any conversations with Mr. Bowes with regard to the closing?

A Yes.

Q What, if anything, did Mr. Bowes tell you?

A I told him to prepare for closing on June 12th.

Q Subsequent to June 5th, and prior to June 12th, did Mr. Bowes make any telephone calls to you in regard to Dennison Personnel?

A Will you give me those dates again?

Q Subsequent to June 5, 1972, but prior to June 12, 1972, did you have any conversations with Mr. Bowes?

A The telephone calls with Mr. Bowes were basically when is he going to get the funds. He also indicated the company was in serious need to close promptly.

Q What, if anything, did you say to Mr. Bowes in response to that?

A I told him when the closing was available he would

get his funds, and not before.

Q Did you explain to him the prerequisites for minimum closing?

A I didn't explain it specifically, no.

Q Did you explain it generally, sir?

A Yes, that at least three million shares had to be sold.

Q On or about June 12, 1972, did you have any conversations with Mr. Levin with regard to the posture of the underwriters as it regarded the scheduled closing on June 12th?

A Mr. Levine ascertained they were ready for closing, that Carlton Cambridge was ready for closing on June 12th.

Q In response to that, what, if anything, did you do?

A Notified the escrow agent and Bowes that the closing would be held.

Q Did Mr. Levine say anything about Stevens, Jackson & Seggos' posture with regard to the closing?

A Mr. Levine called Ziffer, I believe, with reference to the June 12th closing. I called the company and excrow agent.

MR. DAVIS: Objection, as hearsay to what Mr. Levin did.

THE WITNESS: Mr. Levin said he called -- around the horn -- that was what he usually said. Around the horn meant the underwriters, and I called the company and the escrow agent.

Q Now, sir, did there come a time when you appeared at the offices of Republic Bank and June 12, 1972?

A Yes.

Q What was the purpose of your appearance there?

A To have a minimum closing. When I use the word "minimum closing," I mean at least the minimum and not the total maximum. I don't mean only the minimum.

Q Now, sir, was Mr. Bowes at the offices of Republic on June 12, 1972?

A Yes, he was.

Q Did you have any discussion with Mr. Bowes at all when you first saw him at those offices?

A Yes.

Q Do you recall what the nature of that discussion was?

A Mr. Bowes told me that the company would be closed or going through bankruptcy unless a closing was immediately held that day. They were in serious financial difficulty.

Q What, if anything, did you say or do in response?

A I then immediately advised Mr. Rega of the

statement, and Mr. Levin , and Mr. Ziffer was present, advised them of the statement made by Mr. Bowes, and the first order of business was calling in the accountant, and for Dennison Personnel, Mr. Spear, examining his letters and financial statements and demanding an explanation of whether there was a material adverse financial change in the company's condition that would require this offering to be amended, or whatever steps were required. Mr. Spear satisfied all present by his explanation. Then I called Mr. Bowes aside, and I said, "Mr. Bowes, under all these circumstances, I believe that if this issue closes today and you get your funds, I would like to cosign the company's checks, A, to make certain where the proceeds are going to go and, B, as a safeguard to investors in the event that there is a disclosure of the material adverse financial conditions, which we do not know at this moment."

Q Now, sir, was Mr. Spear already present at that time?

A Yes. Mr. Spear was present because the accountant was required at any closing.

Q In regard to your suggestion to cosign Dennison checks, what did Mr. Bowes say in response, if anything?

A Mr. Bowes said in a loud tone that I was trying to grab control of his company; he pushed me and raised his

fists to hit me, and said he would knock my block off and began to act in a very violent manner, and Mr. Ackerman of my office, I believe, intervened at this time. He also called me a number of names and so forth.

Q Sir, as a result of that, what, if anything, did you do with regard to your suggestions for cosigning the company's checks?

A I dropped that matter at the time.

Q Now, sir, you testified that Spear gave an explanation of the financials of the companys and satisfied all present. Do you recall in substance what Mr. Spear said?

A I think it was a question of possible deficit or a seasonal problem that got cleared up. We were mindful of the high risk factor, particularly high risk factory number one, in the prospectus.

Q The prospectus contained in Plaintiff's Exhibit P-1; is that correct, sir?

A Which had been disclosed to the SEC, as to the current assets and the company's dependent on the proceeds for working capital, and the certification of the independent certified public accountants subject to the receipt of at least the minimum funds of this offering.

Q Did Mr. Spear present any certified statements with regard to Dennison?

A Since this was an interim closing, I don't believe he was required to. He did present a comfort letter, as it is called.

Q What is a comfort letter, sir?

A It is a letter given by an accountant to give statements of no material adverse change known to him at a particular time, subject to some exceptions. It is supposed to give comfort to the underwriters and those concerned with the issues.

Q After speaking to Mr. Spear, did you have any conversation with anyone on behalf of the escrow agent with regard to the amount of money in the account at that time?

A That was not the order of how this matter occurred. First, Mr. Rega presented a check. I believe it was approximately $31,000, and the check was uncertified. Then, looking at his check, a determination was made as to the amount of money in the escrow account.

Q Sir, do you recall how much money was in the escrow account at that time without Mr. Rega's check?

A The escrow account at that time was $233,000. With Rega's check, the required fund to be paid to the company would be more than met.

Q Do you recall the amount of Mr. Rega's uncertified check, sir?

Q Did you have any discussion with Mr. Levin with regard to the fact that there was $300,000 in the escrow account?

A Yes, we had conversations with a number of people.

Q How many did you have conversations with?

A Mr. Greco, an attorney, who was formerly on this issue, had come with Mr. Bowes. Mr. Greco said, at first he didn't think we should close.

MR. HEGHMANN: Your Honor, I realize he said the meeting was in flux, but could we get who the parties were as the discussions were going on.

THE COURT: Yes.

THE WITNESS: This discussion, I believe, was in the presence of Rega, myself, Greco, Bowes, Levin, Ziffer; that's about all I can recall at this moment.

Q Was there a discussion with all these people present, were Mr. Greco made some comments with regard to the $300,000 not being in the account?

A Yes.

Q What did Mr. Greco say?

A Mr. Greco said he didn't believe we should close at that time.

Q Did he state why?

A He said that there wasn't $300,000 in the account,

and there was no proof, he said, that Carlton Cambridge had sold all of his shares, especially with that uncertified check in the [illegible] and Mr. Rega became very incensed and he said, "How dare anybody impune his ~~integrity as to the~~ number of shares sold and they can all go to hell," in substance, and they had to calm him down, and then Mr. Levin and myself and all of the parties, at which time with the exception of Mr. Greco who went on the side and talked to Mr. Bowes, we examined the number of documents.

Q Which documents were examined?

A We looked at the prospectus, the terms of the prospectus, we examined the underwriting agreement, we examined the escrow agreement, we called in the bank's attorneys to discuss -- had the bank's attorneys called in to discuss this particular matter, and the conclusion was reached that the beneficial interest in the escrow account was the company's, since more than three million shares had been accounted for, but that the two things were required. One, that the issue should be held in escrow, pending an unusual procedure suggested by me, that the stock certificates be delivered to the escrow agent, and that the underwriters receive no window tickets from the escrow agent.

Q What are window tickets, sir?

A A window ticket would be a communication from the

transfer agent authorizing the underwriters to pick up "X" number of shares when and if they presented the appropriate names and directions. My theory was to prevent the underwriters from laying hands on those shares and directing them to be sent solely to the escrow agent for official counting of the number of shares issued. In addition, the bank's attorneys required a writing from Rega, which was typed on a bank's typewriter in my view, stating that Rega had received all of his commissions and that nothing was due to them from the bank on the distribution of the funds. On that basis, the issue was closed in escrow.

Q Sir, did you make any effort to verify that three million shares had, in fact, been sold or an excess of three million had been sold?

A Yes. On the following day I --

Q On that day, sir, did you make any effort?

A I checked with both underwriters on that day, but I took these other precautions for further determinations. I permitted no money to be distributed at that time.

Q Did you make any inquiry with regard to bi-weekly reports that were sent to the Commission?

A Yes. In our consideration of whether this issue would be held in escrow and closed this way, consideration was given to the fact that the Securities & Exchange

Commission, in what I consider a extraordinary measure, was watching this issue by the taking of bi-weekly reports. This is the first issue I have ever seen in my twenty years or more with the Securities & Exchange Commission that they have, in a full registration, required bi-weekly reports to be sent to them. I think their monitoring of these reports as to the number of shares sold was a factor in our consideration.

Q Did you inquire as to whether these reports had been submitted as of June 12, 1972?

A Yes.

Q How did you determine that?

A Carlton Cambridge and Stevens, Jackson & Seggos, through Ziffer, not on June 12th but immediately before that, indicated that they were making these reports.

Q Who on behalf of Carlton Cambridge indicated that?

A Mr. Levin.

Q On June 12, 1972, did you attempt to account for the proceeds of the number of shares that had been sold according to the representation of the underwriters?

A Yes.

Q How was that done, sir?

A I spoke to Rega and I spoke to Ziffer.

Q Restricting ourselves now to June 12th, was any

determination made with regard to the amount of monies that were collected and how those monies were applied, which monies were deposited in the escrow account, for instance, and --

A The bank requested a letter from me, indicating the distribution requirements of the funds.

Q And did you, on June 12th, ascertain how much money was retained by the underwriters as commission and expenses?

A I didn't ascertain it. Only roughly on June 12th.

Q Did you inquire on June 12th?

A On June 13th, I believe, that occurred. We also requested the transfer company to send me immediately when available a copy of the transfer sheets showing each and every purchase of that stock.

Q When did you make that request, sir?

A About the 13th or 14th. I think I got it the 15th or 16th.

Q Now, sir, who made the suggestion that the closing take place in escrow?

A Mr. Levin and myself made that suggestion.

Q Was Mr. Greco consulted in that regard?

A Mr. Greco, after coming back from his conversation with Mr. Bowes, stated that he was not quite certain now that

the issue could not close. He said it was a close question of law, in his opinion.

Q At that time, sir, did you ask either the underwriters or Mr. Levin for the amount of monies that was retained for the underwriters' commissions?

A I don't understand that.

Q Did you make any inquiry of anyone on behalf of the underwriters as to the amount of monies that were received from the subscribers but not deposited in the escrow account but rather retained as commissions or non-accountable expenses?

A No, I didn't, except what was obviously on the table.

Q What was on the table, sir?

A It was on the table that Carlton Cambridge had deducted its discounts and allowances on this last check and the bank was given a paper which was typed, indicating that fact.

Q How was it determine that they deducted their expenses and allowances?

A It was calculated as to the number of shares they sold and what was deducted and then they arrived at that particular figure. I believe it was 3,073,500 shares having been sold by Carlton Cambridge and Stevens, Jackson.

Q At that time were you able to account for all the funds that would have been collected, which would represent the sale of 3,073,500 shares?

A Yes.

Q And where were those funds at that time?

A The funds required to be paid to the company was in this excrow account, plus there was three thousand some-odd dollars due to Stevens, Jackson & Seggos, and there were no discounts and commissions due to Carlton Cambridge by reason of the fact that they had deducted them on this last check.

Q Sir, referring to Exhibit P-1, is there an indication in the final prospectus as to the amount of money that the company was to realize from the completion of the minimum offer?

A Yes.

Q How much was that, sir?

A The company was to retain a minimum of $255,000.

Q And on June 12, 1972, do you recall how much money was in the escrow account, including Mr. Rega's uncertified check?

A If you include the uncertified check, $263,496.75.

Q It was decided at that time the fund would not be released until, among other things, Mr. Rega's check had

cleared; is that right?

A Yes. The Republic National Bank put that check in as a collection item.

Q What does that mean, as a collection item?

A They apparently didn't deposit it into the account for clearance with their bank, their associate bank, but they put the matter through for collection directly to the paying bank.

Q Would that speed the process of clearing funds up?

A I think it would, yes.

Q Now, sir, at any time during the proceedings held at the Republic National Bank, on June 12, 1972, did anyone state that Carlton Cambridge had commenced trading the issue of Dennison Personnel?

A Absolutely not, nor that they had closed their books on the 29th or any other date.

MR. JAFFE: I move to strike that.

THE COURT: In its present form, yes.

Q During the proceedings on June 12th, at Republic, did anyone on behalf of Carlton Cambridge or anyone else state that Carlton Cambridge had stopped selling the issue?

A Absolutely not.

Q Did Mr. Ziffer or anyone on behalf of Stevens, Jackson state that they had commenced selling the issue?

A They didn't.

Q On June 12th, did you have a conversation with Messrs. Bowes and Greco with regard to the maximum portion of the offering?

A I told Mr. Bowes, in my opinion, the entire issue would be sold. Mr. Rega, Mr. Ziffer, Mr. Greco, Mr. Ackerman and other people were in my presence. I can't certify to the fact they heard that statement, but I believe my tones were sufficiently such that they should have heard it.

Q Sir, prior to adjourning at the bank, the Republic National Bank, did Republic request any letters to be sent to them by either yourself or Mr. Ziffer?

A Not by Ziffer. They requested a letter from me.

Q What was the purpose of the letter that they requested from you, if you recall?

A They wanted to confirm, basically, for their records in some official way the number of shares sold, and the shares issued fully paid and as to how the funds were to be distributed.

Q I show you Exhibit 20. Do you recognize that, sir?

A Yes.

Q What is that?

A That is a letter I sent to Republic National Bank.

Q And in that letter, did you inform the bank as to how the funds were to be allocated?

A Yes, I did.

Q Sir, I show you Exhibit 19 in evidence and I ask if this refreshes your recollection as to whether the bank asked for a letter from Mr. Ziffer.

MR. JAFFE: Your Honor, what number is that?

THE COURT: 99.

A I don't recall. I have seen this exhibit prior to my taking the stand, but I don't recall anybody from Republic National Bank asking Ziffer to sent this letter. It appears he must have his own conversations with them.

Q Sir, referring to Plaintiff's P-1, were there any provisions in there for warrants to be delivered to the underwriter?

A Yes.

Q Provided what warrants are.

A It provided as I recall, the underwriters were entitled up to 600,000 warrants paid on the number of shares actually sold. I think it is one for ten. A warrant would give the holder the right to purchase a share of stock from the company upon the payment of the defined sum. Generally ten percent above the issue price.

Q At the closing of June 12th or proceedings on June

12th at Republic National Bank, were any warrants distributed or requested by the underwriters?

A No. No warrants were distributed or requested by the underwriters, which was a significant factor in having me believe that the issue was going to continue.

MR. DAVIS: Objection.

MR. JAFFE: Objection, your Honor.

THE COURT: Just a moment. Overruled.

Q Mr. Coven, when should these warrants have been requested by the underwriters in this underwriting?

MR. JAFFE: Objection.

THE COURT: Sustained.

Q Sir, have you ever participated in an underwriting other than Dennison where warrants were provided for?

A Yes.

Q Approximately how many, sir?

MR. JAFFE: Objection, your Honor.

THE COURT: Having made the point, the objection having been overruled unless you are trying to make some other point, you do not have to go into the basis.

Q Mr. Coven, subsequent to the closing on June 12, 1973, did you have any conversations with the transfer agent with regard to Dennison Personnel?

A Yes.

Q Who was the transfer agent?

A American Stock Transfer Company.

Q What conversations did you have with American Stock Transfer Company?

A I told them that all stock must be delivered directly to the escrow agent and no stock will be delivered to any of the underwriters, that the company has not received its consideration to authorize the issuance of stock, that he is to send me the transfer sheets as soon as and immediately as available, check out the number of shares actually sold.

Q Do you recall when you made these requests of American Stock Transfer Company?

A I believe late June 12th or June 13th.

Q Whom did you speak to at American Stock Transfer, if you recall?

A Either of the Garfunkel's. I would say my present recollection, Michael Garfunkel.

Q At that time were you counsel to American Stock Transfer Company?

A I did some legal work for American Stock Transfer from time to time, but I am not its general counsel, and do not receive any general fees and am not on an annual retainer They have consulted me from time to time as of other stock

letter of June 13, 1972?

A It was apparently erroneous, arithmetical computation.

Q Do you recall where the information came from?

A The information was obtained from Stevens, Jackson & Seggos and Carlton Cambridge, but apparently there was an arithmetical error made.

Q Now, sir, subsequent to June 12th, did you attempt to telephone Mr. Bowes at any time? That is, subsequent to the closing of June 12, 1972.

A Yes, I spoke to Bowes. He called me a few days.

Q Did you undertake to call him at any time or attempt to call him at any time after the closing, sir?

A At any time after the closing? Do you have a particular date?

Q Between June 12th and June 29th, 1972, did you try to speak to Mr. Bowes by telephone?

A Mr. Bowes called my office a few times. I don't believe I had many occasions to speak with him, but I did speak with him -- I didn't speak with him, rather, until after June 29th, that I can recall.

Q Did you attempt to call Mr. Bowes after the closing with regard to certain disbursements that were outstanding?

A No. Those disbursements were settled --

Q Did you attempt to call him with regard --

A My office called him with reference to printing disbursements and and so forth, that were outstanding. I think the printer wanted to get his bill paid.

Q Did you personally ever call him?

A I don't personally recall calling him, but I do recall telling my staff to get his bill paid because the printers usually get paid on the closing. You had to explain this was an escrow and so forth. They were demanding their money. I think also at this time my office was receiving requests for payment by the printer of the stock certificates.

Q Did you have occasion to personally speak to Mr. Bowes with regard to these bills, you personally?

A I don't believe I spoke to him personally.

Q Now, sir, showing you Exhibit 10 in evidence, a letter dated June 21, 1972, on Dennison Personnel letterhead to American Stock Transfer, signed by Mr. Bowes, I ask you, did you have any conversation with Mr. Bowes with regard to this letter prior to it being sent out on June 21st?

A No, sir. I never knew that Mr. Bowes had sent this letter to the American Stock Transfer Company. He never consulted me about it, never advised me about it, and I didn't know about it. As a matter of fact, this letter I regard as

my obligation as an attorney writing this particular letter.

MR. JAFFE: Your Honor, may we have that exhibit number?

THE COURT: 10-D.

Q Now, sir, do you recall if you personally had any conversation or any communication with Mr. Bowes between June 12, 1972 and June 21, 1972?

A No.

Q You don't recall or you didn't --

A I do not recall ever having any specific conversation with Bowes between those two dates.

Q Did you ever receive a copy of that letter, Exhibit 10 in evidence, from Mr. Bowes or American Stock Transfer?

A Absolutely not. I have never received to this date from Mr. Bowes a copy of the letter that he sent.

Q When did you first learn of the existence of this letter, sir?

A I learned of the existence of this letter after the commencement of this action.

MR. DERFNER: Your Honor, at this time I will be going into a new area, a rather extensive area. It is a quarter to one and it may be a convenient time to break for lunch.

Q In your first conversation did you relate anything to Mr. Bowes about your conversation with Mr. Rega?

A I told him that--I didn't relate any specific portion of that conversation except that I did tell him that Carlton Cambridge was in the sheets.

Q Did you mention stabilization at all, to Mr. Bowes?

A No, I didn't.

Q Did you mention anything about the best efforts portion of the issue being open at that time?

A No. I just told him and I was insistent, that the de registration was required immediately.

Q You stated there came a time when Mr. Bowes got back to you.

A That's correct.

Q Do you recall when that was?

A I believe it was the next day or the 7th.

Q Between your conversation with Mr. Bowes on the 5th, and the time of your next conversation with Mr. Bowes, did you have a conversation with Mr. Levin?

A Yes.

Q What was the substance of that conversation?

A Mr. Levin was informed that Carlton Cambridge was in the sheets.

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Q Now, sir, did there come a time after your conversation with Mr. Rega that you consulted or called the Securities and Exchange Commission about the questionnaires?

A Yes, I did.

Q When was that, sir, do you recall?

A I called Mr. Glusband, I believe it was the 29th.

Q June 29, 1972, is that correct?

A That's correct.

Q What, if anything, did you say to Mr. Glusband?

A I spoke to Mr. Glusband and asked him what the situation was, having in mind the letter of comment directed to me by the Securities and Exchange Commission that the ten cent price was in and of itself was manipulative, which we answered in the last letter of comment. I asked him whether the inquiry was to price or what was it and I also told him that the questionnaires were having or would have a serious affect on the company.

I told Mr. Glusband that I and the issuer would immediately come down to his office and hear any complaints or give them any explanation that he required.

Q Did Mr. Glusband respond?

A Yes, he did.

Q What did he say, sir?

A He didn't pick up my invitation, didn't want to

answer any of the questions and told me that I can consult his superiors if I desired to do so.

Q Did he state anything with regard to the type of investigation that he had undertaken?

A His conversation gave me the impression that it was a routine surveillance.

Q Did he make any comment in that regard?

A No, he didn't, nor did he state an investigation was ongoing.

Q Now, sir, on or about June 30, 1972, did you make any telephone calls to Mr. Bowes?

A Yes, I did.

Q And did you actually speak to Mr. Bowes on that day?

A No. I had left a message, Bowes was not available, and I left a message with Bowes' office, I believe with Mr. Kennedy, that reregistration was required without delay, and to get back to me.

THE COURT: June 30th?

MR. DERFNER: Yes, your Honor, June 30th.

Q Now, sir, did there come a time subsequently when you spoke to Mr. Bowes?

A Yes.

Q When was this?

A There intervened the July 4th holiday, and I spoke to Mr. Bowes on the 5th or--I believe it was the 5th of July.

Q Do you recall the day of the week--

A 5th or 6th, I'm not sure.

Q Do you recall the day of the week June 30th came out on, in 1972?

A May I consult a calendar?

THE COURT: Yes.

A June 30th was a Friday.

Q June 30, 1972 came out on a Friday, is that correct?

A Yes. The earliest I could have spoken with Mr. Bowes was July 5th.

Q What day of the week was that?

A That was a Wednesday.

Q And do you recall what you said to Mr. Bowes when you spoke to him on July 5th or thereabouts?

A I told Mr. Bowes that it appeared that the registration was immediately required because of Carlton Cambridge entering the sheets.

Q What, if anything, did Mr. Bowes say to you?

A Mr. Bowes said he would get back to me and he did get back to me.

Q By yourself?

A Yes.

Q What, if anything, did Mr. Levin say to you?

A Mr. Levin said that there might be a 10b-6 violation.

Q What did that mean to you, sir?

A That meant that an underwriter--that there was a problem, a question as to whether an underwriter could go into the sheets with the best efforts portion of the issue left open. Unresolved with Levin was a question of whether the underwriter had actually ceased his participation because the 10b-6 definition of when participation--

MR. JAFFE: Objection.

THE COURT: Sustained.

MR. DERFNER: Your Honor, would the Court permit Mr. Coven to relate his conversations with Mr. Levin?

THE COURT: Yes.

Q Did you have any discussion with Mr. Levin with regard to the wording of the Rule 10b-6?

A Yes.

Q What was that conversation, sir?

A The question we discussed, a question of the definition of termination of participation. It appeared that Rule 10b-6 defined termination by using the precise

Dennison Personnel with regard to this offering?

A Yes. I did not receive one penny other than represented by these checks, nor did I receive anything of value directly or indirectly. Those checks represent the total amounts paid to me on this issue.

Q Did you receive any shares of Dennison Personnel in regard to your services rendered?

A Absolutely none whatsoever to this day, and none were contemplated.

Q Did you ever purchase a share of Dennison Personnel?

A I never purchased a share of stock of Dennison Personnel at any time, directly or indirectly.

Q Did anyone at Dennison Personnel ever compensate you in regard to services rendered in regard to the issue?

A My full compensation, directly or indirectly, are represented by the checks which have been handed to me and which I have testified to.

Q So that no one else compensated you besides Dennison?

A No one else compensated me.

Q Now, sir, showing you Exhibit P-11 in evidence, which is entitled, "Agreement to Extend the Time for the Sale of Common Stock of Dennison Personnel, Inc.," I show you this, sir, and I ask you if you were present when this was executed?

A I never saw an executed copy of this agreement until this trial commenced.

Q Were you present when it was executed, sir?

A I was not.

Q Were you ever consulted by your client, Dennison Personnel, or by its president, Gerald Bowes, with regard to that extension agreement?

A No. I would like to add one fact for clarification. It is usual in making up papers for an underwriting to make up an extension in advance. I don't know how this extension was signed. I never saw it signed. I didn't procure its signature, and I only saw the executed copy of this at this trial. As a matter of fact, I never saw an unexecuted copy of it.

Q Did Carlton Cambridge or anyone on its behalf consult you about the execution of this agreement?

A They did not.

MR. JAFFE: I object, your Honor, to the form of the question.

THE COURT: Sustained.

Q Mr. Coven, did you ever have any conversation with anyone on behalf of Carlton Cambridge with regard to the execution of that agreement, Exhibit 11 in evidence?

A No, particularly since that agreement calls for

an extension commencing July 24, 1972, and the D registration statement was already filed July 17th. So I find it difficult to understand how an agreement can be executed for an extension commencing July 24th.

Q Your answer is no, you had no conversation with anyone from Carlton Cambridge?

A That is correct.

Q Sir, I show you a copy of Plaintiff's Exhibit P-12 in evidence, a letter dated July 11, 1972, from Carlton Cambridge to Gerald Bowes, signed by George Santoriello as vice president of Carlton Cambridge. I ask you, sir, did you receive a copy of this letter?

A No.

THE COURT: What number?

MR. DERFNER: Exhibit 12.

Q You received a copy neither from Carlton Cambridge nor Gerald Bowes?

A No.

Q Did Gerald Bowes ever consult you with regard to this letter?

A No.

Q Did he ever inform you that he had consulted Carlton Cambridge with regard to the substance of that letter?

A No, he did not.

Q Do you recall when you first learned of the existence of this letter, sir?

A I believe I first learned of it at the commencement of the trial. I also noticed that the date of this letter is July 11, 1972, which was the period that I was trying to get Bowes to sign a deregistration statement.

Q Sir, I believe your previous testimony was that you spoke to Mr. Bowes on July 10th and you didn't speak to him again until July 17, 1972?

A Yes.

Q When you spoke to him at the later date, July 17, 1972, did he inform you of the existence of this letter or of his conversations with Carlton Cambridge with regard to the substance of this letter?

A No, he did not.

Q Now, sir, referring back to the period prior to June 12, 1972, did you ever call Republic National Bank and inform them that only net funds would be deposited in the escrow account?

A I emphatically did not. I was present in court and heard the witness Dallal make that statement. That statement is not so.

Q Did you ever direct anyone from your office to make such a call to the Republic National Bank?

A I never directed anyone in my office to do that. There would be no reason to make such a call.

Q To your knowledge, sir, did anyone from your office make such a call?

A To my knowledge, no.

THE COURT: That was a call to tell the bank what?

MR. DERFNER: That commencing on a certain date -- I believe Mr. Dallal testified it was on or about May 30, 1972 and thereafter -- that only net funds would be deposited in the escrow account.

THE WITNESS: Of course, the records indicate that gross funds were deposited in the escrow account, and no one could ascertain who was depositing what.

Q Now, sir, I ask you today based on your knowledge of the events that transpired subsequent to the closing on June 12, 1972, would you again decide to close this issue in escrow as you did on June 12, 1972?

MR. DAVIS: Objection.

THE COURT: Sustained.

MR. DERFNER: Can I make an offer of proof?

THE COURT: Yes.

MR. DERFNER: Part of the plaintiff's case here is that an injunction should issue against Mr. Coven, and that is based on the reasonable likelihood that future

violations will occur. I would offer this evidence just toward that equitable defense for whatever weight the Court may wish to give it.

THE COURT: I will take it.

Q Do you recall the question, Mr. Coven?

A Yes. I would say this, that considering this matter at hindsight, 20-20 now, and considering the anguish, expense, loss of reputation, loss of about seventy-five percent or eighty percent of my corporate practice, and a misreading possibly of the SEC's attitude, which was not plain in the statute, I have and would in the future adopt a most ultra, ultra-conservative viewpoint and would never close in that condition again. And, as a matter of fact, in a subsequent issue, and all subsequent issues which I have closed, I have made certain that this ultra-conservative approach has been followed. I would not do it again and find myself in the circumstances I find myself in today, the loss of money and the anguish that it has cost.

Q Now, sir --

A (Continuing) I would also add, your Honor, that this case has been so serious that I am unable to obtain work through any brokers or others on the Wall Street market.

Q Now, sir, considering the efforts that were undertaken by the parties at the closing on June 12, 1972, to

determine the allocation, application of various subscriber funds --

A Would you repeat the question?

Q I didn't finish the question.

THE WITNESS: I didn't get the first portion of it.

MR. DERFNER: I withdraw it.

Q Mr. Coven, did you have any agreement or understanding with Stevens, Jackson & Seggos or with its president, Eleftherios P. Seggos, to the effect that on the Dennison issue Stevens, Jackson & Seggos would appear as a nominal underwriter only and would have no selling responsibilities?

A I absolutely and emphatically state that is not true. Mr. Seggos, Stevens, Jackson & Seggos' understanding was plainly written and set forth in the underwriting agreement which was filed with the Securities & Exchange Commission. He was to use his best efforts and he was to get paid if he sold stock, and if he didn't sell stock, he was not going to get paid. I had no special agreement with Mr. Seggos.

MR. DERFNER: Thank you, your Honor. I have no further questions.

THE COURT: We will start with Mr. Berger.

MR. BERGER: Your Honor, I have no questions on cross examination.

THE WITNESS: May I have one moment?

SECURITIES & EXCHANGE COMMISSION
vs. 73 Civ. 2944
JOSEPH REGA, JR., et al,
Defendants.

March 5, 1974
10:10 a.m., Room 618

MR. BACHMANN: Your Honor, Mr. Berger called me this morning. He may not make the morning session but will probably be here this afternoon. As Mr. Berger indicated yesterday before we closed, he has no cross examination of Mr. Coven and does not feel his absence should impede the proceedings.

THE COURT: Then we are ready to proceed.

Mr. Cove, take the stand. You are still under oath.

B E R N A R D J A Y C O V E N , previously sworn, resumed the stand and testified as follows:

THE COURT: Mr. Berger indicated he has no cross. Mr. Brown.

MR. BROWN: I have no questions, your Honor.

THE COURT: Mr. Davis.

MR. DAVIS: Yes, your Honor.

CROSS EXAMINATION

BY MR. DAVIS:

Q Mr. Coven, I would like to go over a couple of things you testified to yesterday and see if we can understan

them a little more fully. During the period from the effective date of the offering to May 30, 1972, April 26 to May 30, 1972, isn't it a fact that you had been continually calling Carlton Cambridge to ascertain how they were doing on the deal, what their position was, how many shares they had sold?

A I may have called them on occasion. I believe Mr Levin called me a number of times.

Q Isn't it true you called them frequently?

A I called them on a number of occasions. I can't use the word "frequent" or "infrequent." We were interested to find out what the status of the sales were, of course.

Q About how often would you say you called them in that duration, April 26 to May 30, 1972?

A I can't tell you. My office called -- I had approximately eight or nine registrations then involved. I had another registration which came effective May 4th, $875,000, with A. A. Bryan Company. I know Levin called, I called, the usual particular link to determine as to the number of shares sold and what the status was.

Q I believe you testified yesterday it was Mr. Levin's basic responsibility to contact Carlton Cambridge and you were contacting Seggos. Is that an accurate statement?

A No.

Q Could you explain a little more fully to us.

A Sometimes Levin called Ziffer, sometimes I called Ziffer, sometimes my office called Carlton Cambridge. There was no particular responsibility or duty except, of course, Levin recommended the underwriters and to that extent it was his obligation to obtain contact with them.

Q This didn't preclude you from calling them, did it?

A Absolutely not.

Q You sought to find out for your client what the status of the offering was at any particular point in time so as to see when the closing could be held?

A Mr. Bowes was pressing for a closing, particularly in view of high risk factors number one of that issue.

Q Yesterday, if I recall your testimony correctly, you testified it was Mr. Levin who called you and told you to prepare for the May 30th closing, isn't that so?

A Would you read my question and answer?

Q Let me see if I can paraphrase it to you. I can't read it to you exactly.

THE COURT: Read the question please, Mr. Reporter.

(Question read.)

Q As I recall your testimony, Mr. Coven, from my

notes it was that around May 30th, you had a indication from Mr. Levin that Carlton Cambridge had sold more than the mini, and the closing should be scheduled.

A I think that is more accurate, that Carlton Cambridge had sole more than three million shares and that the closing should be scheduled.

Q Do you recall if Mr. Rega called you with that same information?

A I can't recall specifically. He may have called me. I did speak to Rega. My sense at this moment is that Mr. Levin gave me the information.

Q Mr. Coven, I would like to refer you to your deposition of February 13, 1974, at the Securities & Exchange Commission. I would like to show you page 121, line 18, and see if that refreshes your recollection at all. Does that refresh your recollection as to whether you received that from Mr. Rega?

MR. DERFNER: Your Honor, I don't think the section Mr. Davis referred to is consistent with the testimony.

THE COURT: Overruled.

A I spoke to Rega on occasion, but my recollection, as I set here right now, is that in substance it was Mr. Levin. I did answer the question as you have got it here, but as I sit here right now, my present feeling is that it was

Levin. I can't say as a positive statement, however.

Q So that it was your answer on February 13th and to the best of your recollection at that time it was Mr. Rega who called you when you were to prepare for a closing of May 30th?

MR. DERFNER: Objection, your Honor. Mr. Davis is not reading the entire testimony; the answer states, "To the best of my recollection it was Rega, possibly Rega, and I was to prepare for a closing on May 30th."

MR. DAVIS: I was served, your Honor, yesterday with a notice of change of deposition, number twenty-seven, which says on page 121, it says, delete Rega to make the answer comprehensive, that is, "possibly Rega."

MR. DERFNER: I withdraw the objection, your Honor.

A These conversations were in a state of flux. Levin called, my office called, and we were notified to prepare for a May 30th closing.

Q Did you also testify yesterday you later received a call from Mr. Levin and he told you Carlton Cambridge was having trouble to collect the proceeds from its customers and the closing had to be put off?

A Yes, I believe so.

Q Was there any reason why the closing had to be

put off, to the best of your recollection?

A I believe I or my office called the escrow agent at that time to determine it, but the basic reason as I understand it, was lack of collection or delay in collection.

Q Would a lack of collection also mean that shares were being canceled?

A It would mean many things. It could mean a cancellation, yes, but collection merely means slowness in obtaining funds. I can't interpret what people mean by that except my own interpretation is money was slow in coming in.

Q Mr. Coven, I would like to refer you to your deposition of February 13, '74, page 123, lines 6 through 10, and ask you to read this and see if it refreshes your recollection as to whether or not cancellations was the reason or one of the reasons for a delay in the closing.

THE COURT: Page 126?

MR. DAVIS: 123, your Honor, line 6 through 10.

A 126 --

Q 123, lines 6 through 10.

THE COURT: You are asking me whether it refreshes his recollection?

MR. DAVIS: Yes, your Honor, as to whether or not tremendous cancellations as used there, was also a reason for the postponement of the closing.

THE COURT: As against?

MR. DAVIS: As against difficulties in collecting payments from customers.

THE WITNESS: Well --

MR. DAVIS: Your Honor, this is simply a further flushing out what the particular reasons for the put off were, and not that the two are inconsistent.

A Well, my answer here states that Levin -- basically that Levin got a call from Carlton Cambridge, cancellation or problems with indications, and I'm not certain as to one or the other, but my understand of this situation was that they had difficulty in obtaining collections. It may have been due to cancellations. I'm not privy to Carlton Cambridge's books.

Q Could you tell us then why you used the words, "tremendous cancellations" on February 13th. That would appear to something more than simply cancellation.

MR. DERFNER: Objection to the latter part of the question, your Honor.

MR. DAVIS: Withdrawn.

Q Haven't you discussed the procedures at the due dilligence meetings on April 27, 1972? Wasn't that the topic?

A What was?

Q Procedures for selling the issue, was that a topi of discussion at the due dilligence meeting of April 27, 1972?

A To an extent, yes.

Q Didn't you write a letter to the Securities & Exchange Commission together with Mr. Levin, outlining the context of the meeting?

A Yes.

Q Were Carlton Cambridge, and Stevens, Jackson & Seggos advised of the contents of the letter in the procedur of selling the deal?

A Yes, they were present.

Q Did a copy of the letter get sent to them, do you recall?

A I don't know. It was Levin's letter and I signed it as having read it and -- Mr. Levin wrote a letter and on the left-hand side I believe I signed it as having read it a that I agreed with the facts. It was a joint letter, so to speak.

Q As I recall your testimony yesterday, Mr. Coven, you stated that from June 12th, which was the date of the first closing, to June 29, 1972, you didn't have any contact with Carlton Cambridge about the Dennison offering, is that true?

A I contacted Carlton Cambridge but not specifically about the Dennison offering.

Q Was the Dennison offering discussed in the context?

A No, not that I know of.

Q You have also testified that at no time from apparently the beginning of the offering until June 29th, when you first learned that Carlton Cambridge was trading the stock, at no time during that period of time was there any discussion whether the maximum portion of the offering would be done, is that so?

A That is correct.

Q It appears from April 26th, the effective date, to May 30th, you were in relatively continuous communication with Carlton Cambridge and Mr. Levin about how many shares were going to be sold and when a closing is scheduled. Can you explain to us why you weren't in such communication to them from June 12th to June 29th, as to when the maximum would be scheduled?

A There were other problems that came up in connection with these underwriters.

Q In other words, you weren't focusing whether or not the maximum portion of the issue was going to be sold at that time?

A I left this to Mr. Levin, basically, as far as

inquiries were concerned, but other problems arose.

Q At the June 12th closing, it is your testimony nobody had any discussion as to when the maximum portion of the offering was going to be done. That wasn't brought up?

A No, it was not. I would point out to you, sir, I had a substantial economic interest in seeing that the balance of this issue was done. My retainer agreement provided for payment of $5,000 additional, if the company received $100,000 above the minimum.

Q And it is your testimony also that -- withdrawn.

I believe at the beginning of your testimony yesterday, and I believe it is a quote, "No underwriter worth his salt could do a Rega offering," a Rega offering being $500,000 or less. And Carlton Cambridge was a very strong house, it was put on a hedge against failure and could sell the deal from its right pocket.

A Given appropriate conditions, absent catastrophies.

Q Were these conditions lacking at the time of the offering?

MR. DERFNER: Objection. Which conditions?

Q Can you tell us which conditions you mean?

A Absent a tremendous break in the market, or harassment by the Securities & Exchange Commission.

Q Do you recall at that time any significant downturn

Ziffer that they had to be making the market on a when, if and as basis.

A That is right.

Q And you didn't call Wien about their being --

A No, it was not my responsibility, not an area of the issuance, attorney's responsibility.

Q Did you call Carlton Cambridge why Wien was in the sheets, if they had any knowledge of it?

A No.

MR. DAVIS: I have no further questions.

MR. JAFFE: Your Honor, if I may, I would like to defer my questioning to the Commission's questioning. I know from reading the deposition they may have broad area and bring up area that may be important to my client. Otherwise, I may find myself in a position where things that have gone into, which would affect my client and I have no chance to ask the question.

THE COURT: You go ahead with your cross and after the Commission has examined, if you find there is additional cross you require, we will take that up then.

MR. JAFFE: Thank you, your Honor.

CROSS EXAMINATION

BY MR. JAFFE:

Q Mr. Coven, you prepared the underwriting agreement

which is part of Exhibit P-1; is that correct?

A I prepared it together with the attorney for the underwriters. However, it is more or less a standard form.

Q Who obtained the signature of Mr. Bowes on the underwriting agreement, if you recall?

A I did.

Q And when you did that, did you go over the underwriting agreement, its various clauses, with Mr. Bowes?

A I didn't specifically go over every part, no. Mr. Bowes got a copy of it.

Q Who obtained the signature of Mr. Rega for Carlton Cambridge?

A I don't know at this time.

Q Do you know who obtained the signature for Stevens, Jackson?

A No, but in the course of events my office would send that out or work out some arrangement. It is a detail that I ordinarily would not take care of. I possibly did obtain Bowes' signature personally, but otherwise it is a detail which I personally would not handle.

Q Do you recall if all the parties who signed the agreement had knowledge of all the provisions of the underwriting agreement?

MR. DERFNER: Objection, your Honor.

THE COURT: Sustained in his present form.

Q Do you recall discussing the provisions of the underwriting agreement with Mr. Rega?

A I never discussed it.

Q Did you discuss the terms of the underwriting agreement with Mr. Levin?

A Of course, but you will recall sir a distribution is made of every printed piece to all persons--

Q I didn't ask that question. I asked do you recall discussing the provisions of the underwriting agreements with Mr. Levin?

A Of course.

Q Do you recall discussing the provisions of the underwriting agreement with Mr. Bowes? Do you recall submitting a copy of the underwriting agreement to Republic National Bank?

A I believe they got a copy of the underwriting agreement in our office.

Q Could you recall transmitting a copy of the underwriting agreement to the Securities and Exchange Commission?

A The underwriting agreement is filed as, I believe it is Exhibit 1A, and the book of exhibits filed with the Securities and Exchange Commission. That is the proposed form of underwriting agreement.

MR. JAFFE: At this time, your HOnor I would like to as the Commission if they have a copy of the comments letter.

MR. BEIRNE: Your HOnor, we don't have it with us. If it is important we will have it retrieved. It is in our office.

MR. JAFFE: I believe one counsel has a copy.

MR. DERFNER: There were several comment letters received, your Honor, one for each amendment but we do have comment letter for amendment two, which is Defendant Coven's Exhibit 22 in evidence, your Honor and I am handing that now to Mr. Jaffe.

Q Mr. Coven, I hand you what has been marked Exhibit 22, a comment letter from the Securities and Exchange Commission. Did you receive that letter?

A Yes.

Q Did you receive it in the course of preparing the underwriting agreement, that is, the registration statement which included the underwriting material?

A I didn't get that.

Q Do you recall receiving it in the course of preparation to the Securities and Exchange Commission of the registration statement?

A Yes.

Q Is there a caption on that letter concerning exhibits?

A Yes.

Q Is there a comment under the caption exhibits?

A Yes.

Q Can you paraphrase for the record the comment made?

A All they are asking for is a new opinion of counsel basically to the effect that shares we issued will be validly issued, etc. It has nothing to do with the underwriting agreement.

Q Do you ever recall receiving a comment letter from the Securities and Exchange Commission in the matter of Dennison Personnel which dealt with the underwriting agreement?

A The only portion of the underwriting agreement which was commented upon by the Securities and Exchange Commission, was the option firm deal section which read basically that the underwriter received the right to purchase all the shares ordered herein and that such shares may not be recovered without appropriate amendment. That was, I believe, in amendment number two.

That gave the underwriters the right to purchase stock for their own account should the issue falter. That

matter of fact, the discussion was to the effect that Carlton Cambridge had done more than the minimum.

Q Did you ask him how much more than the minimum?

A No.

Q Did you ask him if they were selling any more shares at that time?

A No.

Q There is nothing, in your opinion, proper about selling shares after you have set up a closing for the first closing or the minimum closing, is there?

MR. BEIRNE: Objection.

THE COURT: Sustained.

Q As attorney for the issuer would you have found it objectionable if they continued to sell shares from the time they notified you that they had enough shares for the minimum until the closing?

A It's not improper, no.

Q And you had an incentive, didn't you, to see that they sold more than the minimum? As a matter of fact, only $100,000 more you would have gotten another $5,000, is that correct?

A I didn't have an incentive to see that they sold anything. I merely noted the fact that I have an economic interest to see that the issue remains open and that if

possible, every opportunity is given for the sale of the maximum amount of this issue.

MR. JAFFE: Would you read the answer?

THE COURT: Read it back.

(Record was read back by the reporter.)

Q What steps did you take to see that the issue remained open, Mr. Coven?

A I don't take any steps to see that it remains open. The issue remains open except if the underwriters jump in and start trading stock or do anything which signals an end of the issue.

Q So at no time during discussions with Mr. Levin, where he indicated that there were cancellations or difficulties collecting the funds of the stocks sold did you say are they selling more shares? You don't recall any conversation like that?

MR. DERFNER: Asked and answered, your Honor.

THE COURT: Sustained.

Q During this period of time did you ever speak to Mr. Rega?

MR. DERFNER: Your Honor, which period of time?

Q The period of time between approximately May 30th and June 12, 1972.

A Yes, I spoke to Mr. Rega.

THE COURT: It is not disputed that Stevens, Jackson had indicated earlier on its intention to form a selling group, is it?

MR. HEGHMANN: Your Honor, our contention is Stevens, Jackson never had any intention of participating in the issue. Mr. Caplin had a salesman who knew people at Carlton Cambridge. Mr. Caplin had the same dentist as Mr. Seggos and asked if he could sell some of the shares, and thereafter Mr. Seggos put Mr. Caplin in touch with Mr. Ziffer and fortuitously Caplin sold shares. Our obligation as to Stevens, Jackson is they were in name only a participant.

MR. JAFFE: Your Honor, with respect to that, we do have Exhibit D-21. No one at the Commission at that time said that is not a proper bi-weekly report.

MR. DERFNER: Mr. Heghmann conveniently forgets the testimony of Messrs. Lian and Ziffer, who were employed by Stevens, Jackson & Seggos, both of whom testified in April of '72 Mr. Seggos told them, that Stevens, Jackson was going to participate in this issue and they would prepare for that.

THE COURT: We do not really need to go any further on that at this time. Go ahead, Mr. Jaffe.

BY MR. JAFFE:

Q You indicated at the gathering or closing of June 12, 1972, in answer to the question, was there a number of

shares sold, that the bank asked you to write a letter and that letter I believe, is Exhibit P-21.

A At the closing it was ascertained the number of shares then sold.

Q Did that number of shares ever change? In other words, after you made the ascertainment on or about June 13th which you indicated was corrected by 1,500, by the actual counting of the certificates, do you know of any other shares that were sold by either Carlton Cambridge, Stevens, Jackson & Seggos, Gotham Securities or any other member of the selling group?

A No.

Q You didn't issue any opinion letter with respect to any additional shares, did you?

A There were no further closings.

Q You indicated before, one of the purposes of the opinion letter was that a transfer agent would rely upon it.

A That is right.

Q Did the transfer agent ever ask you for another opinion letter subsequent to that time?

A I believe we did give the transfer agent an opinion letter to complete its file. I'm not certain. But the transactions in this closing occurred in a rather unusual way.

Q I don't mean that. Did you give them an opinion letter other than the opinion letter marked as Exhibit P-8, May 30, 1972?

A He may have gotten another opinion letter. I'm not certain now.

Q With respect to what shares?

A With respect to issued shares. Wait a moment. That was Mr. Bowes who took it on himself to write that letter. That is the June 21st letter.

Q Is that Exhibit P-10? Is it the letter dated June 21st to the American Stock Transfer Company, authorizing 3,073,500 shares common stock, for full consideration as per the prospectus?

A Right. I didn't issue that.

Q Do you recall that was done in accordance with the request of the American Stock Transfer Company?

A No, I don't recall anything of the sort. I never saw this letter until the action was commenced.

Q At the gathering or closing of June 12, '72, was there any conversation with respect to continuing to sell the issue?

A No.

Q None at all?

A Not one way or the other except what I said to

gathering?

A Yes.

Q And as a result of that, request was made of Mr. Rega to sign a statement which has been marked P-18?

A That is correct.

Q I am showing you P-18. Does that refresh your memory as to how that letter was drafted and on what basis Mr. Rega signed it?

A This letter was drafted at the bank. I believe it is the bank's language, on the bank's typewriter. Basically this letter was to avoid a merry-go-round of exchanging checks of the same amounts and commission.

Q Was that reviewed by the bank and yourself?

A Bank counsel was there, Mr. Delisle was there, Mr. Hirsch was there.

Q Did Mr. Rega sign it after conferring with counsel?

A I have no recollection of that.

Q Was Mr. Levin there?

A Mr. Levin was there.

Q You were there?

A I was there.

Q Bank counsel was there?

A Correct.

Q And was the language of this letter drafted by Mr.

nplm

THE COURT: That is within a ten-day period Government's document being filed with the Court.

MR. BROWN: Yes, your Honor.

THE COURT: All right, Mr. Beirne.

CROSS EXAMINATION

BY MR. BEIRNE:

Q Mr. Coven, directing your attention to your initial meeting with Mr. Bowes, I believe on direct you stated that meeting took place in 1971. You then refreshed your recollection by looking at the retainer agreement which is Plaintiff's 3 in evidence, and you indicated that the meeting had taken place at about the time of that retainer agreement; is that correct?

A I think that the retainer agreement was signed after. It is in that area.

Q So that there was an initial meeting with Mr. Bowes after you had been recommended to him by Mr. Caplin and subsequent to that meeting, the retainer agreement was signed; is that correct?

A I believe that is the way it was. At or about that time.

Q Again, at the first meeting, was the subject of his retaining you as counsel discussed at all?

A Yes, it was discussed.

Q What did you say to Mr. Bowes and what did he say to you on that subject?

A Originally, as part of the discussion, I think Bowes wanted to retain Greco on this issue, to assist Greco in placing this issue with an underwriter. I don't recall that entire conversation, but I do recall stating to him if he wishes us in this matter he would have to retain us as attorneys; our positions as lawyers.

Q Rather than having Mr. Greco as attorney and you assisting?

A That is correct. Bowes had the initial -- now it is coming back to me, I spoke to him more than once -- he had the first impression he wanted me to assist him in placing the issue.

Q And you took the position if you were to work on the offering it would be as attorney; is that correct?

A That is correct. I'm not a finder. I don't recall saying that in those words.

Q What was Mr. Bowes --

A My understanding of Caplin's recommendation of Mr. Bowes to me was as general firm work, legal work for the company, to take over the issue.

Q Rather than as a finder?

A Rather than a finder.

Q What was Mr. Bowes' reaction when you said that you would be attorney, if you were to participate in the offer?

A I can't recall.

Q Did he accede to that?

A He did retain me as attorney.

Q What I am trying to get at is, did he agree to retain you at this first meeting?

A I can't put it in that context. This was not an important event that I recall. All I know is, I had an initial conference with this particular client, we discussed the retainer, $25,000, and in the usual fashion I would have given him a copy, we have an office form for that retainer, and -- I don't know precisely how it happened, but he did retain us.

Q Is it your testimony that you gave him the form retainer agreement at this first meeting and he took it with him?

A No. I don't know whether it is the first or second meeting. I can't testify with respect to the first meeting and second meeting in that particular area. All I can tell you is that I had a conference with a client who was recommended, and this wind up shortly thereafter with a retainer.

Q But do you recall discussing the fee which you

went the other way.

Q You didn't remember exactly how you learned that they were withdrawing though; isn't that correct?

A Would you repeat that question.

THE COURT: Read it back.

(Question read.)

A I didn't testify that way, sir.

Q Let's start again. Lehman brothers withdraw; is that correct?

MR. DERFNER: For clarification, it is not Lehman brothers.

MR. BEIRNE: Lehman Bartels.

A I was advised by Lehman Bartels.

Q You were advised by the firm that it was withdrawing?

A Lehman Bartels were constant visitors to my office, among other things, social friends.

Q The principals of the firm?

A Right. Bartels had been to my home and we were social friends.

Q Do you remember which one of them advised you that the firm was withdrawing?

A No.

Q Did anyone from Lehman Bartels actually sign

either a letter of intent or an underwriting agreement concerning Dennison?

A A letter of intent, I believe, was signed and a letter of -- an underwriting agreement was never signed because an underwriting agreement is never signed until the issue becomes effective and, therefore, since the issue never became effective, there was no requirement that Lehman Bartels sign the underwriting. There was, however, a proposed underwriting agreement submitted to the Commission with the filing.

Q Let's disregard underwriting agreements. Let's consentrate on letters of intent. You are saying there was a letter of intent that was actually signed by someone from Lehman Bartels?

A This is to the best of my recollection.

Q As opposed to Plaintiff's 4 in evidence which apparently bears your signature?

A That is correct.

Q Do you know what happened to that letter of intent, the one signed by someone from Lehman Bartels?

A I think that Mr. Bowes should have one. I can't explain that. The only possible other explanation is that Bowes possibly signed this first, but I don't see it that way. I can't explain except my signature appears there apparently by error, which can occur, signing a batch of papers,

erroneously picking up a paper.

Q So you don't have a letter of intent executed by someone from Lehman Bartels; is that correct?

MR. DERFNER: Objection, your Honor. There is no such testimony.

A I don't know whether I do or not. I don't believe I do. It is really not significant. It only binds the company. It does not bind the underwriter. Letter of intent does not bind the underwriter. It is a one-way contract.

Q After Lehman Bartels withdrew, Stevens, Jackson & Seggos came into the picture; is that correct?

A Yes.

Q Now, I believe you testified on direct that at approximately this time, the issue was restructured to provide for a minimum, maximum provision; is that correct?

A Yes.

Q Whose idea was that, the mini-max?

A I think it arose out of the necessity of the financial condition of the company. In other words, a minimum represented in a securities exchange way, the required amount of money necessary to make this company a public, viable vehicle.

Q Is it generally easier to sell an issue that has a minimum or all or nothing feature than it is to sell best

best effort, an insufficient amount of shares were sold on a straight best effort deal, the company would have trouble... I didn't think the SEC would pass it anyhow.

Q At the same time, the price I believe was reduced from, was it five dollars to ten cents; is that correct?

A No. The original understanding, which didn't go to the SEC, was a continuation of the five dollar price. That is on the March 3rd draft with Seggos' name on it as managing underwriter. I don't know what exhibit number that is.

Q Did there come a time when the price was changed from five dollars to ten cents?

A Yes.

Q I think you said on direct that was Mr. Seggos' idea; is that correct?

A That is correct.

Q Did you discuss that with Mr. Bowes?

A Yes.

Q What was his reaction? Did he have any strong feelings as to that?

A At first he resisted the idea.

Q On what basis?

A He didn't feel his company was a penny or a ten-cent company.

Q What did you respond to him?

THE COURT: Here I think you will have to make him your own witness.

MR. BEIRNE: I would like to make him my own witness for a series of questions.

MR. DERFNER: I object on the ground plaintiffs have rested their case, they put their case in without calling Mr. Coven, they elected not to call him. At this point to make Mr. Coven their own witness, I submit, is reopening their case and that is improper.

THE COURT: Did I understand you to say to put the question he will have to make him his own witness?

MR. DERFNER: Correct, your Honor. That was not meant to waive my objection that I just interposed. I felt at that time there was no reason to get into it prematurely.

MR. JAFFE: Your Honor, maybe I had better pass on --

THE COURT: Just a moment. All right, objection sustained.

BY MR. JAFFE:

Q Getting back to Mr. Seggos, Dennison Personnel was not the first underwriting that you had brought to Mr. Seggos' attention; isn't that correct?

A As of what time?

Q As of March 1972.

A The only issue that ever became effective, prior to Dennison or after Dennison, was Balance Computer, a regulation A offering, in California, basically.

Q You were counsel for the issuer on Balance Computer; is that correct?

A No, I was not.

Q Were you counsel for the underwriter?

A Yes.

Q And the underwriter on that one was Stevens, Jackson & Seggos; is that correct?

A I believe Stevens, Jackson & Seggos and I believe, I'm not quite sure, Fund Securities.

Q Counsel for the company was who?

A Mr. Levin.

Q Balance Computer became effective. How many shares were sold by Stevens, Jackson & Seggos?

MR. DERFNER: Objection, your Honor. Beyond the scope of direct. We are now getting into the issue of Balance Computer. We conceded Mr. Seggos was an underwriter on Balance Computer and Mr. Coven was the attorney for Mr. Seggos in that regard. What relevance the terms of Balance Computer has to this trial, I submit there is no relevance and, furthermore, it is beyond the scope of direct at this point.

MR. BEIRNE: Again, your Honor, what I am inquiring

into is the reasonableness of Mr. Coven's conclusion which he testified to on direct that Seggos had the capability for doing the Dennison offerning and I'm going into the other offerings merely to show the kind of track record involved here.

MR. DERFNER: Your Honor, I believe Mr. Coven's direct testimony was rather extensive as to the basis for his conclusion that Mr. Seggos could syndicate the issue. I would have no objection to Mr. Beirne examining Mr. Coven on his direct testimony and those facts on which he based his conclusion.

THE COURT: Overruled.

Q Do you recall the question?

A No.

THE COURT: Read it.

(Question read.)

A In Balance Computer not a single share was sold by anybody anywhere, because this particular issue developed serious problems which made it impossible for anyone to consider further selling the issue.

Q How did Mr. Levin become counsel for that issue?

A I recommended Mr. Levin to be counsel for the company.

MR. DERFNER: I object to the question as beyond

direct and ask the answer be stricken.

MR. BEIRNE: Your Honor, what I'm getting into is the testimony that Mr. Levin's becoming counsel for the underwriter in Dennison stemmed -- Mr. Coven said it stems from his friendship or his having met Mr. Seggos, and also because he was willing to take a contingency fee. I am suggesting that this --

THE COURT: Those questions were put by you, were they not?

MR. BEIRNE: That is true, I am once removed from the direct, but I asked about Mr. Levin originally based on the direct testimony with respect to the various amendments and Mr. Coven gave an aswer to that question. What I am doing now is, I am frankly examining into his testimony on cross, but I think it is justified by the references on direct to the various amendments in the Dennison offering including those which had Mr. Levin as counsel.

MR. DERFNER: Your Honor, Mr. Beirne did leave out in Mr. Coven's testimony that one of the reasons Mr. Levin became counsel was that Mr. Coven recommended him on Dennison. Mr. Beirne didn't include that. And, it is conceded.

THE COURT: Sustained.

Q There were underwritings which you brought to Mr. Seggos' attenti- which didn't become effective; is that

correct? 569a

MR. JAFFE: Objection.

THE COURT: Overruled.

A Were there underwritings which didn't become effective, is that the question?

Q Yes.

A Yes. That is not a correct way to put it. Seggos went off the underwriters. That is a better way of putting it.

Q In any event, Stevens, Jackson & Seggos didn't sell any shares in the underwriting.

A The issues never became effective.

Q Balance Computer became effective in January of 1972; did it not?

A If you will let me look at it, I'll tell you.

Q I am showing you what has previously been marked as Plaintiff's 109 for identification.

THE WITNESS: Was an objection sustained to this line, your Honor? I don't recall.

THE COURT: No.

MR. DERFNER: Is his Honor going to permit questions with regard to Balance Computer?

THE COURT: Some questions.

A This became effective January 28, 1972.

Q How about Eclipse Systems. Was this one of the underwritings Mr. Seggos appeared on but which didn't become effective?

MR. DERFNER: Objection, your Honor, beyond the scope of direct.

THE COURT: Overruled.

A That issue was recommended but I didn't know if there was a red herring issue on that one. I don't recall. It didn't become effective. Are we still on this Balance Computer here?

THE COURT: Mr. Beirne, the witness is inquiring as to the issue we are on now.

MR. BEIRNE: Eclipse, your Honor.

THE COURT: The question is, did it become effective?

MR. BEIRNE: The question was, your Honor, whether this was one of those underwritings which was recommended to Mr. Seggos but which never became effective.

A It did become effective, but not in the hands of Mr. Seggos. Eclipse did become effective.

Q Showing you what has been marked previously as Plaintiff's 110 for identification.

A This issue --

MR. DERFNER: Is there a question that has been

posed?

THE WITNESS: Did it become effective is the question, I think.

Q I was going to ask you, first of all, do you know when a red herring on Eclipse Systems was filed?

MR. DERFNER: Objection, your Honor. I submit at this point Mr. Coven is being made a witness of the plaintiff.

THE COURT: Sustained.

Q On that offering, you were counsel for the issuer, were you not, Mr. Coven?

MR. DERFNER: Which offering?

MR. BEIRNE: Eclipse Systems.

MR. DERFNER: Same objection, your Honor.

THE COURT: Let's see where that goes. I will allow it.

A Yes.

Q Mr. Levin was counsel for the underwriter?

A Not when the issue became effective.

Q But at one time he was counsel for the underwriter?

A At one time. Mr. Levin was counsel for a short period of time and then was substituted by somebody else.

Q Eclipse was a ten-cent issue, was it not?

MR. DERFNER: Objection, your Honor.

THE COURT: I will allow it.

A Eclipse was a five dollar issue.

Q Was it at any time changed to a ten-cent issue?

MR. DERFNER: Objection, your Honor.

THE COURT: I will allow it.

A Not that I can recall.

MR. DERFNER: Your Honor, with regard --

THE WITNESS: You have in your file --

THE COURT: Just a moment.

MR. DERFNER: With regard to any questions about M[illegible] appearing on other issues that Mr. Coven is also on, I submit I can see that is an allegation in the complaint, but I submit no proof was offered on that subject on plaintiff's direct case.

THE COURT: What is your application?

MR. DERFNER: That any questions in that regard not be permitted and they be stricken if they were asked and answered previously.

THE COURT: The last reference to Mr. Levin is stricken.

MR. DERFNER: Thank you, your Honor.

Q Mr. Seggos was put on the cover for the Dennison Personnel offering in March of '72; is that correct?

A He was not put on the cover. Mr. Seggos went on

was aware of any.

THE COURT: Let's take a question at a time. Go ahead.

A At or about this time, perhaps a little bit later, I was informed that there was a question concerning Stevens, Jackson's capital net ratio.

Q Did you take any action based upon that knowledge?

MR. DERFNER: Objection, your Honor.

THE COURT: The time period?

MR. JAFFE: I was just about to ask the time period, your Honor.

Q This came to your attention, you say, would it be fair to say, late in May, 1972?

A My present recollection is it is closer to around the first week in June of 1972.

THE COURT: I will allow it.

Q Did you take any action when you learned that?

A Yes, I did.

Q What was that?

MR. DERFNER: Objection, your Honor: Same objection.

THE COURT: Overruled.

A I took a look at the books of Seggos myself and there appeared to be a ratio. I then retained the services of an independent auditor and I sent him at my own expense into Stevens, Jackson & Seggos to see what the situation was with reference to the books, and I paid this accountant myself, $1,000 in that situation; out of my own pocket. That's what I did. That is the start of what I did.

Q Did you inform Mr. Bowes of the problem and what you did?

MR. DERFNER: Mr. Beirne is making Mr. Coven his witness, I believe, your Honor, based on the nature of his testimony.

THE COURT: What is the answer as to when you informed Mr. Bowes?

THE WITNESS: I didn't inform Mr. Bowes.

Q Again, when you were told that Carlton Cambridge had done more than the minimum, is it fair to say that at that point you prepared for a closing?

A For May 30th, yes.

Q And you drew up the document that you have identified on direct?

A I had my office draw the document and I guess Levin drew his own documents.

Q You testified on direct that you--first of all, the closing was not held on May 30th, is that correct?

A That's right.

Q And I believe you testified that you spoke to someone at Republic National Bank?

MR. DERFNER: Objection as to form, your Honor. What time or what discussion, Mr. Beirne is referring to.

THE COURT: Are you referring to the May 30th intended closing?

MR. BEIRNE: That is correct, your Honor. It is my recollection in testifying as to why the closing wasn't held that Mr. Coven mentioned--

THE COURT: Overruled.

A I didn't notify them the closing was called off. I notified them there was a closing on. It might be my office notified them the other way. I don't know.

Q Did you have any discussion with anybody at the bank as to the amount of money in the escrow account?

A Yes.

MR. DERFNER: May we fix a time, your Honor?

THE COURT: Will you do that.

A Prior to May 30th. Maybe one or two calls before that.

Q Directing your attention to the first time you

called Republic National with respect to the escrow account, whom did you speak to?

A I don't recall with whom I spoke. I called the bank and identified myself but I couldn't get the information about the escrow account.

Q Why was that?

A What's that?

Q Why was that?

A I was told that the account was not in the name of the company or in my name; it was in the name of the underwriters. I never got, as a matter of fact, I never got a statement from the bank, I guess based on the same theory.

Then I believe I spoke to Dallal or Hersch and I got information. The information I got was the amount in the escrow account. I couldn't determine from my conversation which underwriter put what in the bank. I just got the results.

Q Was there enough money in the escrow account to hold the closing?

MR. DERFNER: May we fix a time, please?

THE COURT: Yes.

THE WITNESS: About May 30th.

Q About May 30th?

A No, about that time it was woefully inadequate.

Q Was it at that point that you called off the May 30th closing?

A I didn't call off the closing. The underwriters did, Carlton Cambridge. They adjourned it, that is a better way of putting it, they adjourned it to another tentative date, June 5th.

Q Did you speak to anyone at Cambridge about it?

A As I testified here today, I was told there was problems in collection by Mr. Levin or Rega and I believe it was Mr. Levin.

Q Did you ask Mr. Levin or Mr. Rega to explain why there was such a small amount of money in the escrow account?

A No, I didn't.

Q But you were told in connection--

A They had problems with collections and it required to set forward the date--it was not an unusual request. It was almost standard in any issue. I have never seen it go off with clean closing-wise. There are usually some adjournments.

Let me put it this way, Mr. Beirne. I can't follow every deposit and every withdrawal by Carlton Cambridge. That's not my job as attorney for the issuer. I

would have to station an accountant with a computer at Carlton Cambridge to follow every possible sale of Dennison stock and where they put the money, where it's going. That is not my obligation nor am I capable of doing that.

Q So the closing was adjourned to June 5th, is that correct?

A That's right, tentatively.

Q Did you subsequently have any conversations with Republic National Bank as to the amount of money in escrow?

A Yes. It was also insufficient about that time.

Q Did you have a conversation on or about June 5th?

A I called the bank and asked about the escrow account. It was not sufficient for closing. The underwriters required additional time.

Q Did you have a conversation with anybody on behalf of Carlton Cambridge as to the amount of money in the escrow account?

A No.

Q Did you have any conversation with anyone representing Carlton Cambridge as to the necessity of adjourning the closing date?

A Necessity? There was no talk of necessity. Just that we are not ready, they were collecting.

Q Whom did you speak to on this occasion?

A I believe now it was Levin.

Q It wasn't Mr. Rega?

A I believe it was Levin.

Q Did you have any conversations with Mr. Rega at or about this time?

A What time?

Q June 5th.

MR. DERFNER: With respect to Dennison, your Honor. I would say otherwise it would be irrelevant.

MR. BEIRNE: I'm probing, your Honor, if there were any other conversations for the purpose--

THE COURT: All right.

A Not with respect to Dennison.

Q Did you have any conversations with him with respect to matters other than Dennison?

A Yes.

Q But Dennison didn't come up?

A No.

Q Again, directing your attention to the date of approximately June 5th, sometime prior to this you had a telephone conversation with Mr. Lian, did you not?

A Prior to when?

Q Prior to June 5th, or approximately early June.

A From early June--I had many conversations with Mr. Lian and I did have one in early June, that is correct.

Q I believe you testified on direct that you asked Mr. Lian on whether Stevens, Jackson & Seggos would be making a market in Dennison Personnel, is that correct?

A I don't want to take that out of context, Mr. Beirne. That was only one statement in general conversation. I didn't call him up specifically for that purpose.

Q But you did ask him that, is that correct?

A Yes, I did.

Q I believe you testified that you didn't, however, say anything about M.S. Wien going into the pink sheets, is that correct?

A Absolutely not. I had no contact with M.S. Wien prior to or after or at any time during the Dennison Personnel issue up to, including, and after the deregistration of this issue, and prior to the filing of any amendments.

Q There did come a time when you found out M.S. Wien was in the sheets?

A Yes, I was informed.

Q When did that happen?

A Th[illegible]irst week in June.

Q Who informed you of that?

A I got that from ~~Kaplan~~ Carlton as well as from Mr. Ziffer.

Q I believe you testified on direct that you advised, at least Mr. Kaplan, that it was a when, as and if issue, is that correct?

A I don't believe I testified to that on direct. However, I will answer the question.

Kaplan asked me whether the issue closed on May 30th. Evidentally Ziffer told him it was going to be closed at May 30th. I told him it hasn't closed. He told me MS. Wien was in the sheets and I told him I couldn't see what they were in the sheets about, it had to be a when, as and if issue, it wasn't closed yet and they had no stock and that was it. I told Mr. Ziffer basically the same.

Q At this time you say you didn't know Carlton Cambridge had closed down the issue, is that correct?

A That is correct.

Q Did the fact that somebody was making a market in the stock raise any questions as to whether the issue might be over?

MR. DERFNER: Objection, your Honor. I think

it is bad as to form.

THE COURT: Sustained.

Q Were you concerned when you saw that M.S. Wien was in the sheets, that the issue might be over?

MR. DERFNER: Objection, your Honor, as to form.

THE COURT: I will allow it.

A The answer is no, for two reasons. In the first place there had been no closing and there was certainl no certificates in circulation. M.S. Wien was playing on a when, as and if basis. Anything they did had no significance whatsoever, at that time, certainly.

Secondly, the issue had a way to go and there was a closing to be held. I saw no affect on M.S. Wien. It didn't really concern me at all.

Q You didn't attempt to call M. S. Wien, did you?

A No. M.S. Wien, I think, had a reputation dealing in cheap stock. They were a trading house. They were not a retail house. Furthermore, I expected the underwriters to obey the law. The due diligence--

MR. JAFFE: Objection, your Honor. Not responsive to tne question.

THE COURT: Sustained.

MR. DERFNER: Your Honor, I submit it is responsive in the form asked. The form your Honor allowed to be asked was did it concern him and he is saying now why it didn't concern him.

THE COURT: I think you're right.

A The due diligence letter would prohibit a sale of any stock to M.S. Wien since the requirements by the Securities and Exchange Commission is, we had to follow, said no shares were to be sold in any company, by any broker whose business is primarily trading.

MR. JAFFE: Your Honor, I object to the characterization, with respect to the letter. It has been clear there were guidelines set down and it is unclear what letter is referred to.

THE COURT: Overruled.

THE WITNESS: It is a May 30th letter. There is a statement in the letter no stock could be sold--I think it is--

THE COURT: Whose letter?

THE WITNESS: May I see a copy? It is the response to the letter of Mr. Glusband.

MR. BEIRNE: This is the reply letter.

THE COURT: Levin's letter dated May 30, 1972, to SEC, is the letter.

MR. BEIRNE: That is correct.

MR. JAFFE: Your Honor, I object to the characterization of a letter which is in evidence, which speaks for itself respectfully..

THE WITNESS: It says here there would be no sales by broker dealers primarily engaged in trading.

THE COURT: All right, overruled. Do you wish to continue for five more minutes?

MR. BEIRNE: I would like to continue, your Honor.

THE COURT: All right.

Q At the time M.S. Wien went into the sheets, Mr. Coven, is it fair to say a minimum closing had been scheduled and then adjourned, is that correct?

A I don't know today when they actually went into the sheets.

Q M.S. Wien appears for the first time in the pink sheets of June 2nd.

A Well, there was a delay of course in the closing.

Q But at the time M.S. Wien went into the sheets, a minimum closing was then scheduled for June 5th, is that correct?

A I can't tie them together but there was an

adjourned tentative date of June 5th. It has not been done with any regard to M.S. Wien.

Q It is nevertheless the fact that was the status at the time?

A Whatever the coincidence may be, no adjournment was had with M.S. Wien in mind or in any way attached or annexed to any activities on the part of M.S. Wien.

MR. DERFNER: Your Honor, these two facts, haven't been established independently of Mr. Coven. Mr. Coven testified he has no knowledge, from one to the other.

THE COURT: His testimony on direct was that in June of '72, he talked with Ziffer regarding Gotham and he was asked if it was permissible that Gotham was remitting net, and about the same time the witness spoke to Ziffer who told him that Wien was in the sheets.

MR. DERFNER: My point is, your Honor, we are not contesting the existence of these two facts that Mr. Beirne is trying to link togetner through this witness, who is not the proper or competent witness to link these facts together.

THE COURT: You mean they appeared in the sheets on the second--

MR. DERFNER: And the closing was adjourned from May 30th to June 5th. These are--

THE COURT: I would venture to say plaintiff would have certain inferences drawn.

Is that so?

MR. BEIRNE: Actually, your Honor, the inferences are secondary to the fact that I was introducing my next question, basically.

THE COURT: All right.

Q Mr. Coven, in your approximate twenty-eight years of experience in the securities field, when would you say a when, as and if issue market generally opens up vis a vis a final closing?

MR. DERFNER: Objection, your Honor. First, Mr. Beirne has put facts in his question that are not in evidence regarding the experience of the length of time Mr. Coven has been experienced in the securities field and, secondly, I believe he is now qualifying or attempting to use Mr. Coven as his own expert.

I think that is not permissible especially in the light of the direct examination of Mr. Coven, when I asked him a similar question with regard to the issuance of warrants and when in his experience warrants would be issued and your Honor didn't permit me to go into that area.

MR. BEIRNE: Your Honor, I would point out two things. First of all, Mr. Coven did testify he began

practice in 1946.

MR. DERFNER: Not in the securities industry, your Honor.

THE COURT: That's easily corrected. Go to the next part.

MR. BEIRNE: The next part is, he testified that he concluded that the market which began--

THE COURT: Yes, I know what he concluded. Mr. Derfner makes the point there was an objection to eliciting similar testimony with reference to the witness' views regarding warrants.

MR. BEIRNE: I think the difference may be, your Honor, again, I'm attempting to examine the reasonableness of a conclusion made by Mr. Coven, that is, his conclusion that M.S. Wien's market was perfectly all right, and was not the cause for any suspicion.

MR. JAFFE: Your Honor, in this area, we have had testimony from the SEC witness, Mr. Glusband, regarding a similar question by Mr. Beirne, exactly the same circumstances. My point for raising this is, if Mr. Beirne put that question to his own witness and an answer was solicited, perhaps it would not be appropriate that this witness answer it, too.

THE COURT: Just one moment. I will allow it.

MR. DERFNER: Your Honor, just one--

THE COURT: But correct the experience of years, if you will.

MR. DERFNER: On the issue of Mr. Glusband's testimony, I do recollect Mr. Glusband testified that he noticed M.S. Wien in the sheets and he dismissed it as not important because it was on a when issued basis or market.

For Mr. Beirne to elicit contrary, would impeach--

THE COURT: I don't know if it is going to be contrary.

MR. DERFNER: I don't either, your Honor, but he may be attempting to do that. If it is not contrary, there would be no relevance.

THE COURT: How many years of experience?

THE WITNESS: Over twenty or more.

Q I will rephrase the question.

Mr. Coven, in your experience, when does that when, as and if issue market generally begin vis a vis the closing of--

A The time basis?

Q Would it be shortly before a closing or right after the effective date, for example?

A Well, it depends upon, first of all, the type

and kind of issue involved. It often depends upon the type and kind of underwriter involved, and generally, I think when, as and if issue, when he is giving some signal of confidence.

Q Is it fair to say a when, as and if issue market opens up when a closing is imminent?

A Not necessarily. He merely signals confidence in the underwriter, Carlton Cambridge, largest house in the east, something like that. When the market maker is willing to take a risk on the largest house in the east. We can't tell what's in his mind to make up his mind.

THE COURT: We will interrupt right here. Ten o'clock tomorrow morning.

MR. JAFFE: Your Honor, with respect to timing, I understood from your clerk you have a trial on Thursday.

THE COURT: Yes, but if we go over I will take a look whether we can continue half-days until we finish it.

MR. JAFFE: Again, Friday is motions day in New Jersey.

THE COURT: I'm afraid that is going to have to give way this time to the schedule. The schedule might or might not conflict. We will have to wait and see what happens to him.

A My representation of Stevens, Jackson in July '72, was in it really a retainer as a counsel. It appeared that the Securities & Exchange Commission merely followed up upon me because of my appearance before the Commission on the 14th, with Seggos.

THE COURT: In connection with --

THE WITNESS: In connection with Seggos' appearance as to his ratio.

THE COURT: So you had represented Seggos at that time, that is, Stevens, Jackson?

THE WITNESS: My purpose of appearing at the Commission was basically -- I don't think I can state it as a legal position -- but, basically for the purpose of representing Dennison Personnel, involving one of the brokers who apparantley had financial difficulties at that particular time, or was said to have financial difficulties at that particular time.

THE COURT: In short, were you, during June or during July, the attorney for Stevens, Jackson in connection with any matter before the SEC?

A I appeared on June 14th, but I didn't appear pursuant to a fee arrangement. I didn't take any fee from him.

THE COURT: Whose lawyer were you, whether you were paid or not?

THE WITNESS: At the SEC, my appearance, on behalf of Stevens, Jackson on the 14th.

THE COURT: 14th of June.

THE WITNESS: Yes.

THE COURT: It had something to do with Dennison?

THE WITNESS: My purpose in appearing there was basically in support of the issue because one of the brokers went out of business, that would be the end of the issue and it would require possibly a recision of this issue and the return of funds to subscribers if Seggos was found to be out of ratio.

THE COURT: All right.

BY MR. BEIRNE:

Q Mr. Coven, did you ever tell Mr. Bowes that you had represented Stevens, Jackson & Seggos?

MR. JAFFE: Your Honor, I make a motion to strike the last testimony as being speculative and irrelevant.

THE COURT: I will strike so much of it as refers to what may have happened with respect to the broker and with respect to the Dennison matter.

MR. DERFNER: Your Honor, I would submit that that testimony is relevant to the state of mind of Mr. Coven at that time, as to whether he was representing Stevens, Jackson or representing Dennison Personnel.

THE COURT: You don't have any objection to it being taken for that purpose. You are just objecting to it as to the truth of the ascertion, as to whether or not indeed his state of mind represented the facts.

MR. JAFFE: That is correct, your Honor.

THE COURT: Then I accept both of your requests in that respect. All right, go ahead.

MR. BEIRNE: I believe there is a pending question.

A Did I tell Mr. Bowes that I had gone down on the 14th?

Q Specifically, that you had represented Stevens, Jackson & Seggos, yes.

MR. DERFNER: Objection, your Honor. Mr. Coven has testified in his mind he was representing Dennison Personnel.

THE COURT: I will allow it.

A I didn't inform Mr. Bowes to that effect.

Q You had, during the period of April, May and June, also represented Carlton Cambridge, in various connections, had you not?

A I don't recall. If you can refresh my recollection as to any matter I would be glad to answer. I don't recall representing Carlton Cambridge in June.

Q Do you recall being counsel for Carlton Cambridge

in connection with the offering of Melbourne Equities?

MR. DERFNER: Objection, your Honor. Mr. Beirne is trying once again to go into the collateral matters that were stricken yesterday.

MR. BEIRNE: Your Honor, I am asking this question along the same lines as the Stevens, Jackson & Seggos question. I believe I can establish that Mr. Coven was representing Carlton Cambridge, and I intend to ask him whether he disclosed this fact to Mr. Bowes.

THE COURT: Overruled.

A I don't believe I represented Carlton Cambridge in that issue. I believe I represented the issuer. I don't know the date of the issue. If you have a copy I would like to see it.

MR. BEIRNE: Your Honor, I withdraw the question. Mr. Coven is correct. He represented the issuer.

MR. DERFNER: Your Honor, I move to strike the entire question and I believe Mr. Beirne embarked on an attempt to prejudice the atmosphere. He had the prospectus here yesterday and it tells there who Mr. Coven represented. On his representation on an offer of proof that he could establish --

THE COURT: The application to strike the last question with reference to this last issuer, and Carlton

A You asked would a house like M. S. Wien speak to an underwriter. My answer is --

Q May I finish the question.

THE COURT: Just a moment. Put the question.

Q All these sources that you mentioned, are sources of the prospectus or registration statement. There are sources from which a house like M. S. Wien could have gotten the registration statement or the prospectus?

A At that moment, in my opinion, that is all that is required.

MR. JAFFE: Your Honor, I would like to object to any further questioning along this line. The question was asked and certainly was answered extensively. What we now have is an attempt to somehow go beyond it, to argue really with the witness as to his answer. If I may, your Honor --

THE COURT: He has not made him his own witness.

MR. JAFFE: Yes, your Honor.

THE COURT: He may inquire somewhat behind the answer, to some extent. Overruled.

Q All those sources you mentioned, those are places where M. S. Wien could get the prospectus or registration statement; is that correct?

A Could get information sufficient at that moment for a due diligence file.

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Q What could he get aside from the prospectus and the registration statement?

A Matters concerning the company and the price of the stock. All matters concerning the company and the price of the stock. That is all he would be regularly at that moment, in my opinion.

Q Would he get from any of those sources any information as to whether the offering was proceeding in a successful manner?

MR. DERFNER: Objection, your Honor. Now Mr. Beirne is purely in a collateral area. We have gone very far afield. Mr. Coven answered the question in his expert opinion and going beyond that is getting into a collateral area.

THE COURT: Overruled.

(Question read.)

A I don't think that would be of interest for that type of broker at that moment.

Q You are saying he wouldn't be interested in whether the offering was likely to be successful, is that what you are saying?

MR. DERFNER: Your Honor, may I have the last answer read back.

THE COURT: Read it back.

(Answer read.)

A In other words, the broker is taking a gamble. It means a when, as an if issue. He knows the issue is not closed. He can't get stock from buyers and he can't deliver to sellers. He knows he can't do that. He is taking a gamble, snap game.

Q You are saying in connection with that gamble, he wouldn't want to know what the odds are, namely, whether the offering is going to be successful?

A I don't know what he wouldn't want to know. He might have other reasons. He might see that Carlton Cambridge is on the cover, the biggest house in the east. For that reason he sees it is a $600,000 ten-cent issue and for that reason he may just go in because Carlton Cambridge is on the cover.

MR. JAFFE: Your Honor, if I may, we did have a representative from M. S. Wien in here who testified regarding -- Mr. Preston Morris, if I recall -- who testified about that period of time and how they got in the issue. Had we not had that witness I could understand the need going into this, but we are going into speculation, speculation and we had a live witness, live trader who handled that matter and gave his reasons on the record with respect to it.

MR. BRIRN: Your Honor, it is a completely

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different thing. What I am inquiring into here is Mr. Coven's testimony that he never realized that Carlton Cambridge had shut down the issue and none of the subsequent events put him on notice or reasonably brought to his attention the need for inquiry. We know what Mr. Morris testified to, but what I am examining into is Mr. Coven's state of knowledge at the time.

A I will say this, sir --

THE COURT: Overruled.

A (Continuing) -- there is a provision in the securities business that issuers' attorneys should stay away from trading. That is the problem for underwriters' attorneys. Issuers' attorneys' obligation is to see the client is protected. It is particular when, as and if issue trading that matters. It is not my obligation.

THE COURT: Did I understand you to testify earlier that you had represented underwriters as well as issuers?

THE WITNESS: Yes, I have. That is a stern proverb in the security business, attorneys for issuers, stay away from trading, watch your company.

Q Would you say it was in the interest of the company for trading to be shut down at the end of May?

MR. DERFNER: Objection as to what was in the

interest of the company, your Honor.

THE COURT: Sustained.

Q Are you saying, Mr. Coven, that there is nothing unusual about a trader entering the pink sheets without making a determination as to the success of the offering or how the offering is going?

MR. DERFNER: Objection, your Honor.

A I don't understand that question.

MR. DERFNER: I believe his testimony speaks for itself, your Honor.

THE COURT: I think it is fair question.

(Question read.)

A I assume a trader goes into the sheets at any time has in his mind to determine -- has something to determine in his mind to determine whether the issue is going up or down. He may go into the pink sheets as a pirate, to drive that price down, so the issue can't go out unless somebody takes care of him in some way, or he might take it on the up side. I don't know what M. S. Wien had in mind, selling short, long, who they were trading with or anything else. There are a number of factors I have to find out what M. S. Wien is thinking about.

Q Does a trader generally go into the sheets on a when, as and if issue basis toward the end of the offering?

MR. JAFFE: Objection, your Honor.

THE COURT: Overruled.

A Not necessarily, no. I have seen when, as and if issue situations when the SEC telegram arrived when the issue was effective.

Q In those situations, would those be situations when the issue is already sold out?

MR. DERFNER: Objection, your Honor.

THE COURT: Sustained.

MR. BEIRNE: Your Honor, I don't think the answer was responsive to my question.

THE COURT: Sustained.

THE WITNESS: May I ask a question? Was M. S. Wien in the sheets after the issue became effective and trading started?

Q Let's ask this --

A If you answer me that question, I can --

THE COURT: M. S. Wien as I recall appeared in the sheets on June 2nd.

THE WITNESS: That's it?

THE COURT: That is all that --

THE WITNESS: It appears then M. S. Wien was not interested in the success of the issue and dropped out before real trading began. Had they been interested in the success

of the issue, it would have continued trading --

THE COURT: Don't misunderstand. I just sought to help you by providing information. I thought we agreed on yesterday they appeared in the sheets on June 2nd. I am not suggesting that that is the only date. That is when they first appear in the sheets. Is there any disagreement about that?

MR. JAFFE: No, your Honor. I was going to say that perhaps for Mr. Coven's information, for no other purpose that he might be shown the chart which was prepared, regarding the trading during June, and --

THE COURT: If he requires it, in the next area of questioning, he certainly may avail himself of it.

THE WITNESS: Certainly, your Honor, if M. S. Wien didn't trade after market trading really began, they took a shot and changed their mind.

THE COURT: I don't know. Go ahead with the next question.

BY MR. BAIRNL:

Q The issue became effective on April 26th, Mr. Coven; is that correct?

A That is right.

Q M. S. Wien for the first time went in on June 2nd.

THE WITNESS: Your Honor, may I have a minute.

I will be right back. Just excuse me.

THE COURT: Yes.

(Short recess)

Q I believe I had just asked about the effective date, April 26, 1972; is that correct, Mr. Coven?

A That is right.

Q And the first date M. S. Wien appeared in the sheets is June 2, 1972; is that correct?

A I don't know.

MR. DERFNER: I submit at this time, your Honor, Mr. Coven should be shown a copy of Plaintiff's exhibit P-37 which is the summary chart prepared by Mr. Glusband.

THE COURT: You may show it to him. What number is it?

MR. HEGEMANN: Actually, it is 38.

(Handed to the witness.)

Q My question, Mr. Coven is merely this --

A Just a second.

Q My question is merely, do you know of any reason why M. S. Wien would have sufficient confidence in the underwriter on June 2nd to enter the sheets when it had not done so during the month of May, for example?

MR. DERFNER: Objection, your Honor. This calls for speculation as to the reasons Wien may have.

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THE COURT: It seems so to me. I will sustain the objection.

Q Now, you testified, Mr. Coven, when you spoke to Mr. Lian in early June, you asked him whether Stevens, Jackson & Bergen would be making a market; is that correct?

A Right, prompted by a general conversation.

Q Why did you ask Mr. Lian about making a market on that particular occasion?

A No particular reason. Just following up on the due diligence piece, so both brokers --

Q They had said that at the due diligence meeting?

A Right.

Q Why did you choose to ask Mr. Lian about it in early June?

A I don't believe there was any particular reason at all.

Q It had nothing to do with the fact that the offering was almost over; is that correct?

A Do you want me to speculate about the reasons? I can give you speculations.

MR. DERFNER: I object to the question, your Honor, it assumes facts not in evidence. We are talking about Mr. Coven's state of mind at the time of the conversation. Mr. Beirne is now characterizing a state of events that could not

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have been known at that particular time.

THE COURT: It was known the closing had been scheduled, the minimum closing. Your point is, it is defendant's contention as he was concerned, the issue as far as the maximum was concerned was not over.

MR. JAFFE: I will accept stipulation of the plaintiff that the issue was over at that time.

THE WITNESS: As a matter of fact, your Honor --

MR. BEIRNE: Of course I don't agree with Mr. Derfner's intention as to Mr. Coven's state of mind.

THE WITNESS: I will say this, that --

MR. DERFNER: There is an objection pending, sir.

THE WITNESS: I would like to answer the question.

THE COURT: Just a moment. We have an objection. Read that question back, please.

(Question read.)

THE WITNESS: If Seggos --

THE COURT: Just a moment. Well, unless you add the word "minimum" to modify offering --

MR. BEIRNE: I will withdraw the question, your Honor. Actually I am suggesting --

THE COURT: Or reframe it.

Q My question basically, Mr. Coven is, that if in early June, as you say, you expected the maximum amount of the

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offering to be done, why were you at that particular point asking Stevens, Jackson & Seggos about opening a market?

A That is not a correct statement. I asked if they were going to trade. I'll point this out to you, if Lian declared to Carlton Cambridge he was going to trade, that would have the issue open because one of the concerns of Mr. Rega was that anything that Seggos sold, that in any after market Carlton Cambridge would have to buy it back and eat it.

MR. DAVIS: Your Honor, I object to Mr. Coven's statement of the concerns of Mr. Rega. Apparently it is not based on any direct conversation or specific facts. It is based upon Mr. Coven's impression.

THE COURT: It is only an impression. I will sustain the objection. If it is only an impression, I will sustain the objection.

Q Is it only an impression, Mr. Coven, or based upon a statement made to you by Mr. Rega?

A It is an impression of the matter. It was obvious to me --

THE COURT: The objection is sustained, that portion.

A (Continuing) It is obvious to me since Carlton Cambridge is the master market maker, that any shares that Seggos sold, would have eventually -- it would be in Carlton

Cambridge's interest in an after market to have everybody trading.

MR. JAFFE: Objection, your Honor.

THE COURT: Mr. Beirne?

MR. BEIRNE: I think the witness is in a positi to make that analysis, your Honor.

MR. DERFNER: Your Honor, if I may be heard, Mr. Beirne asked Mr. Coven why he could have or asked Mr. Lian l. early June if Seggos is going to make a market. Mr. Coven i giving what his state of mind was at that particular time an why he did ask Mr. Lian if Seggos --

THE COURT: Are you saying this is admissible because it is a state of mind?

MR. DERFNER: Not binding on Carlton Cambridge.

THE COURT: Mr. Jaffe's only concern is whether or not it is binding on Carlton Cambridge.

MR. JAFFE: And Mr. Rega.

THE COURT: What is the purpose for the question?

MR. BEIRNE: I had been looking for Mr. Coven's state of mind. I think in addition to that, he gave us an analysis of the market and certain facts of life.

THE COURT: I will accept it as to his state of mind. I am troubled as to more than that, frankly.

MR. DAVIS: I think it reflects Mr. Coven's

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speculation as to potential trading, your Honor, and --

THE WITNESS: In other words, it keeps the issue going.

THE COURT: Are you limiting your inquiry as to state of mind? If so, I will take it.

MR. PHIPPS: Your Honor, I would point out that, general matter, going back to my previous argument, Mr. Coven is a man who can make analyses of this type. I believe by virtue of his experience he does know a lot about the over-the-counter market, public offerings and new issue markets, following public offerings.

THE COURT: Let me hear the answer again, and I will assess it in that light.

MR. DERFNER: Your Honor, before that, I submit that Mr. Beirne's offer of proof is clearly irrelevant. Mr. Coven's analysis of the situation now has no bearing on this issue at all. His state of mind at the time he called Mr. Lian I submit is relevant.

THE WITNESS: This is my analysis.

THE COURT: Just a moment. I think that is true I will sustain the objection and I am willing to accept it only as to the witness' state of mind.

THE WITNESS: Let me make certain my answer is understood.

MR. JAFFE: Objection, your Honor, no pending question.

THE WITNESS: I want to make certain my answer is understood that this assist in selling the maximum issue of this -- that is my analysis of the situation, looking at it from an analytical point of view as I sit in the witness chair right now -- my conversation with Mr. Lian, as I point out, was on general topics and this was one of the things I asked him, whether they intended to trade and he told me that that depended on Seggos.

MR. JAFFE: Your Honor, I feel --

THE COURT: It is accepted only as to state of mind. Go ahead.

BY MR. BEIRNE:

Q So that in summary, at this time your impression was that the underwriters would go forward in an attempt to sell the maximum portion of the issue; is that correct?

A My impression was that at one time, that the maximum was indeed sold, the maximum would be sold and was indeed sold.

Q Specifically in early June though, was it your impression --

MR. JAFFE: Your Honor, I would like to get that answer reread.

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THE COURT: Read it back.

(Answer read.)

MR. JAFFE: Can we get an impression as to wh... the maximum was sold, your Honor?

THE COURT: Not at this time.

Then I stand by my ruling. I am restricting my question to early June, first week of June that we have be... discussing. At that point, in early June, was it your impression that the underwriters would use their best efforts to sell the entire maximum, six million shares?

A My opinion didn't change from the beginning. It was my understanding from the beginning.

Q And it didn't change, so the answer is yes?

A That is right.

MR. JAFFE: Your Honor, I was going to object the question as to relevance, but I think the question of best efforts was at the beginning of the issue and the que... as to June was irrelevant.

THE COURT: Overruled.

Q And the appearance of M. S. Wien in the pink sheets did nothing to change your impression; is that corr...

A No, not at all.

Q And this didn't change your impression in spi... of the fact that at that point you had scheduled a minimum

Mr. Rega's uncertified check was about $262,000; is that

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closing --

A Minimum only to the --

Q Excuse me, I haven't finished --

A Only to the fact that the maximum, the fullest need been sold. We stated --

Q I understand that. But, a minimum closing was scheduled at that point and it would be a long time if ever before a maximum closing could be held; is that correct?

A That is your conclusion.

MR. DERFNER: Objection. I object to the form of the question.

THE COURT: Objection sustained.

Q Now, I think you also testified that during this time, again we are talking about early June, that you had discussions with Mr. Rega, but not on the subject of Dennison Personnel;, is that correct?

MR. JAFFE: Objection, your Honor. When I tried to inquire into that area, your Honor objected to any questions -- upheld objection, I believe, of the plaintiff as to any areas other than concerning Dennison Personnel.

THE COURT: Your question is?

MR. BLIRNE: It was merely an introductory question, your Honor. I believe the witness said he spoke to Mr. Rega at that time --

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THE COURT: As to that question, the objection overruled. You did speak to Mr. Rega?

THE WITNESS: Yes.

Q Did you ever mention to Mr. Rega the appearance [illegible] pink sheet?

A No.

MR. DERFNER: Your Honor, I assume Mr. Beirne talking about the conversations in early June 1972.

MR. BEIRNE: Yes.

Q We will restrict ourselves to the period before June 12th for the time being. During this period between beginning of June and June 12th, did you ever ask Mr. Rega how the selling of the issue was going, Dennison Personnel.

A Between what time?

Q Beginning of June 12th.

A I didn't speak to Mr. Rega -- I don't recall speaking to Mr. Rega about the issue at that time. I spoke Mr. Levin. However, I did speak to Mr. Rega, but not about Dennison Personnel.

Q And Dennison Personnel didn't come up in your discussions?

MR. DERFNER: Asked and answered, your Honor.

THE COURT: Sustained.

Q Now, after June 12th, did you ever ask Mr. Rega

THE COURT: As to that question, the objection is overruled. You did speak to Mr. Rega?

THE WITNESS: Yes.

Q Did you ever mention to Mr. Rega the appearance of Wien in the pink sheets?

A No.

MR. DERFNER: Your Honor, I assume Mr. Beirne is talking about the conversations in early June 1972.

MR. BEIRNE: Yes.

Q We will restrict ourselves to the period before June 12th for the time being. During this period between the beginning of June and June 12th, did you ever ask Mr. Rega how the selling of the issue was going, Dennison Personnel?

A Between what time?

Q Beginning of June 12th.

A I didn't speak to Mr. Rega -- I don't recall speaking to Mr. Rega about the issue at that time. I spoke to Mr. Levin. However, I did speak to Mr. Rega, but not about Dennison Personnel.

Q And Dennison Personnel didn't come up in your discussions?

MR. DERFNER: Asked and answered, your Honor.

THE COURT: Systained.

Q Now, after June 12th, did you ever ask Mr. Rega

how the selling of the maximum portion of the issue was going?

A I didn't speak to Mr. Rega from about June 15th on to about the 29th.

Q So the answer is, no?

A No.

Q Did you ask Mr. Levin about how selling of the maximum was progressing, after June 12th?

A No.

Q Why was that, Mr. Coven?

MR. DERFNER: Objection, your Honor, as to "why."

THE COURT: I will take it.

A Is there a question? I believe Mr. Levin was busy at that time with some other matters.

Q So you had asked Mr. Levin on numerous occasions before June 12th, about the progress of the offering, but you didn't ask either Mr. Levin or Mr. Rega about the progress of the offering after June 12th; is that correct?

A I personally didn't. Perhaps my office made calls and so forth, but I personally didn't. I was busy on another issue.

Q But you still maintain it was your impression they would sell the maximum or use their best efforts?

A That is correct.

Q You didn't ask him how they were coming along in

that effort?

A I personally didn't, except with reference to Seggos.

Q Except with reference to Seggos?

A That is right.

Q Does that mean you spoke to Rega or Levin with reference to Seggos?

A No, I spoke to Seggos.

Q Did you speak to Seggos to ask him how he was coming along in doing the maximum portion of the issue?

A Seggos told me that he would bend every effort to sell more shares.

Q When was this?

A After June 12th. That was the very purpose of going to the Commission on attempt to save --

MR. DAVIS: Objection. No question pending.

THE COURT: All right, sustained.

When you say after June 12th Seggos said he would bend every effort to sell more shares, do you mean in terms of the remainder, almost three million issued?

THE WITNESS: That is right. That is why I spent the fund I did to put an accountant in there and did a number of other matters, in an attempt to save the Seggos firm.

Q Why were you looking to Seggos instead of to

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was a conversation in late May or early June, with Mr. Co[illegible]'s office in which Mr. Delisle learned that the underwriters [illegible]ul[illegible] be submitting net checks. Mr. Coven in his direct testimo[illegible] testified that he didn't as far as he knew, his office ha[illegible] not so informed Mr. Delisle.

THE WITNESS: As a matter of fact, I [illegible] the checks were submitted into that account.

Q When did you first learn that net proceeds wer[illegible] being forwarded in connection with the Dennison offer?

A I never learned net proceeds were being forwar[illegible] with the exception of Mr. Ziffer's statement with referenc[illegible] to Gotham Securities. The only time this net problem oth[illegible]wise came up was at the closing of June 12th.

Q Why was Gotham Securities forwarding net check[illegible]

MR. DERFNER: Objection, your Honor. No found[illegible]tion for that.

MR. BEIRNE: I will rephrase it, your Honor.

Q Did you discuss with Mr. Ziffer why Gotham was forwarding net checks?

MR. JAFFE: Objection. Hearsay, your Honor.

THE COURT: Overruled.

A No. I learned about it after the case commenc[illegible]

THE COURT: You learned about what?

THE WITNESS: Why Gotham had submitted checks.

THE COURT: Why?

THE WITNESS: Yes.

Q A closing was not held on June 5th; is that correct?

A That is right.

Q Was it still collection problems at Carlton Cambridge?

A I believe that they asked for an adjournment, extension of time.

Q Did you have any discussion with anybody at Carlton Cambridge as to the need for an adjournment?

A Need for an adjournment, no.

Q As to an adjournment in general.

A No.

Q Any conversation at all?

A I was advised by -- Levin called about the hour again, and we each called the respective parties, we each took turns, and what have you, and it requires Levin's attention. Need of more time.

Q They needed more time?

A The underwriters, incidentally, set the dates for closing. The issuer doesn't do that.

Q And you inform the parties of the dates and so on; is that correct?

A That is right. Not necessarily myself personally

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Q Your office?

A It might be my office, yes.

THE COURT: The underwriters would normally c[illegible] the order?

THE WITNESS: They put the order. The broker [illegible]. [illegible] sit by and pray they get the money.

Q So there was an adjournment to June 12th; is t[illegible] correct?

A Right.

Q On June 12th, Mr. Rega showed up with an uncer[illegible]fied check, in the amount of approximately $31,000; is th[illegible] correct?

A Correct, 31,000 plus.

Q Even with this $31,000 check, there was no $3[illegible] available in the escrow account; is that correct?

A No, but with this check the beneficial interes[illegible] of the escrow account pass to the company, pass to my cli[illegible].

Q How did you determine that with the various commissions and deductions, there was $300,000?

A I spoke to the underwriters, the escrow accou[illegible] -- the company had to get $295,000 to make that issue effecti[illegible]. That is what I kept my eye on. I wanted -- I believe the[illegible] the amount -- $295,000. There was more than $295,000 in t[illegible]

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account. That money belonged to my client. That is what the prospectus said, when three million shares were sold, $255,000 belonged to my client and that is what I was there to collect.

Q But nothing would belong to your client unless three million shares were sold; is that correct?

A That is right. That was the only a million, 5 million, not less than three million shares sold.

Q At this point, you had been informed that Dennison Personnel had a need for capital, to say the least; is that correct?

A What do you mean by "this time?" I don't understand that question.

Q June 12th.

A Are you referring to the prospectus?

Q No. I believe you testified that on both June 5th and June 12th, you were informed by Mr. Bowes that it was very, very important to hold the closing because --

A I don't believe I testified to that, with reference to Mr. Bowes on June 5th, did I? I don't recall that.

Q Is it your testimony that --

A I have no recollection --

Q -- that you were not informed of that on June 5th

A I have no recollection of testifying that way,

I spoke to Bowes on June 5th and he told me about the financial condition. No, that is not my recollection.

Q Was there a conversation along that line on June 12th?

A Yes.

Q So that you knew that there was a question of the financial condition of Dennison Personnel; is that correct?

MR. DERFNER: I object to the form of the question. It is vague. Obviously --

THE COURT: Sustained.

Q But there was a conversation in which you were told that it was very important for Dennison Personnel to receive the funds; is that correct?

A With Mr. Bowes are you talking about?

Q Yes.

A That is right.

Q At this time as well, June 12th, Stevens, Jackson & Seggos had possible net capital problems; is that correct?

A Well, as it turned out, they didn't. That was a SEC thrust, but as it turned out, they didn't.

Q Was was the situation on June 12th?

MR. DERFNER: Objection, your Honor. This is beyond the scope of direct examination.

MR. BEIRNE: Actually, your Honor, what I am

getting to, there was extensive testimony on direct concerni the June 12th meeting, discussion of Mr. Rega's check and obviously the propriety of closing under the circumstances.

THE COURT: All right, overruled.

MR. JAFFE: Your Honor, if I may, as to the statement just made by counsel for plaintiff. We have been very careful during this proceeding to use the word "gatheri generally, as to June 12th. There was really -- there was n closing as such until stock certificates were delivered, and then monies were disbursed.

THE COURT: All right.

MR. BEIRNE: The June 12th gathering, wherever I said closing, I meant gathering.

Q I asked you what was the status of Stevens, Jackson & Seggos on June 12th as opposed to what you learned later.

A I don't believe I knew the status, the precise status of their ratio on June 12th. It was not a matter at that closing or gathering I was concerning myself about.

Q Did you know that Stevens, Jackson & Seggos had at one point voluntarily ceased operating at the behest of the NASD?

MR. DARFLER: Objection, your Honor, unless limited to June 12, 1972.

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mentioned briefly?

A At the closing or gathering?

Q Yes.

A No.

MR. JAFFE: I apologize, your Honor, I missed the question.

THE COURT: Let's just go forward.

Q In terms of --

A I will say, Mr. Beirne, I have never seen an issue where there hasn't been a collection problem of one type or another in new issue stock. There are adjournments granted frequently, made frequently. There is nothing unusual or extraordinary about the situation at all.

Q There was not $300,000 in the escrow account; is that correct?

A At the time of the closing, or the gathering, there was not $300,000 in the escrow account, but Carlton Cambridge check, less their commission and expenses was way over the $300,000 mark.

Q What did you do to determine whether Carlton Cambridge or whether the underwriters had sold three million shares?

A First, I checked the matter with the underwriters. Secondly, I held this gathering in the escrow situation, and

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directed that the transfer company should not -- that the underwriters could not obtain a window ticket from the transfer company to pick up any shares; I adopted the extraordinary precaution of having the shares delivered directly to the escrow agents for counting, physical counting and I requested the transfer company send me the official transfer list of the issue customers ordered by the underwriters from the transfer agent.

Q You mentioned that you checked with the underwriters. Did you check with Mr. Rega personally?

A At that gathering, I spoke to Rega, I spoke to Ziffer, one of Mr. Rega's loud complaints was about that Mr. Greco should doubt him as to the number of shares he actually sold.

Q Other than Mr. Rega saying that he didn't like the idea of having his integrity questioned, did he produce any documentary evidence on the question of whether three million shares had been sold?

MR. JAFFE: May I ask your Honor, what time?

MR. BLUMM: All my questions are June 12th.

A At June 12th, he didn't

Q Did he produce any records after June 12th on the question of how many shares he had sold?

A Well, I understand directions, requests or other

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matters had gone to the escrow agent, and gone to the transfer company and, of course, we did rely on the Securities & Exchange Commission. The Securities & Exchange Commission required bi-weekly reports.

Q Did you call up the Commission to see if they had [illegible] reports?

A The Commission particularly called us and we wrote a letter on May 30th. They said if the bi-weekly reports were not in, this was a possible basis for suspension of the issue. I assume since no further action was taken by the SEC, they were getting bi-weekly reports.

Q And you assume the bi-weekly reports would show the sale of three million shares?

A I have never seen anything to the contrary, sitting here, up to my sitting here today.

Q Did you call the SEC to see what by-weekly reports they had?

A No, sir. The SEC assigned a special person, apparently, to see that these bi-weekly reports got in there.

Q You mentioned that the underwriter sent certain documents to the transfer agent; is that correct?

A That is the usual form. I assume that is how -- that is how the transfer agent issues shares.

THE COURT: We will interrupt here and resume

Mr. Rega's uncertified check was about $262,000; is that correct?

A I believe that is more. I have to see the prospectus.

Q I am showing you Plaintiff's 16 in evidence.

A With that check it is $263,496, and I believe there was another thousand dollars there, I don't know how that got in there. They had a full amount of $273,496. Can I have the prospectus for a moment?

Q The prospectus provides -- is what you are saying the prospectus provided for approximately that amount as proceeds to the issuer?

A No, it provides only for $255,000.

THE COURT: Excuse me, the $263,000 then did not include the uncertified check of Mr. Rega?

THE WITNESS: The 263 includes the uncertified check. The 263 -- even with the commissions taken cut, it appears there was more money then was required to pay the company, your Honor.

Q Are you saying, Mr. Coven, that the amount of $263,000 in the escrow account indicated to you that three million shares had been sold at ten cents a share?

MR. JAFFE: Asked and answered, your Honor.

MR. DERFNER: Objection, your Honor. It was not

asked and answered. Mr. Beirne has asked several questions how he determined three million shares were sold and he answered that factor, 263,000, was one of the factors but not as Mr. Beirne characterized it.

THE COURT: Overruled. You are objecting to the characterization?

MR. DERFNER: Yes, your Honor. Mr. Beirne's question was, are you saying the $263,000 was proof --

MR. BEIRNE: Indicated to you.

THE COURT: As I understand it, the witness has indicated there were several things he relied upon of which this was one.

MR. DERFNER: That is correct. If that is the question, I have no objection. That was not my understanding of the question, your Honor.

THE COURT: The objection is overruled.

A There was $300,000 in that account. That will not indicated the requisite number of shares was sold either.

Q So that it really didn't make much difference how much was in the account as far as you were concerned?

A I would say that was a definite plus factor.

Q You would say it was a plus factor, 263,000 rather than 300,000?

A It is a plus factor that the 263, plus the discount

and allowances which were taken out plus the fact that even with the discount and allowances of Carlton Cambridge taken out, there was more -- there was an excess sum in the account of above the 255,000, which was due to the company. If anybody was going to do anything with this escrow account --

Q How did you know that this is, in fact, what happened, that they had, in fact, collected the proceeds for three million shares, and deducted their commissions, rather than merely having sold about $263,000 worth of stock?

MR. DERFNER: Objection, your Honor. It has been asked and answered in another form.

THE COURT: Overruled.

A I cannot, and no attorney for the issuer can follow the sale of every single share of the stock from the internal operations of the brokerage house. We do start out with an assumption that people are obeying the law. This is one of the factors --

THE COURT: Mr. Coven, I suppose it is conceded that the issuer has certain obligations in connection with that which is set forth in the prospectus?

THE WITNESS: Yes.

THE COURT: Now, the question as I understand it is, what steps were taken by the issuer or you on behalf of the issuer, to determine how many shares were sold. You have

answered that already.

THE WITNESS: I have answered that by four or five factors.

THE COURT: The current question now, as I understand it, is how did you know that 263,000-odd dollars did not represent an indication that 2,634,000-odd shares was all that was sold?

THE WITNESS: It would be ten cents a share, so it would be 2,634,067 looking at it from that point of view.

THE COURT: How did you know that that did not represent sales of two million odd thousand shares?

THE WITNESS: Because the original issue transfer sheets indicated 3,073,500 shares, stock certificates counted by the bank were 3,073,500 shares, and evidentally from what I have learned during this trial, there was other evidence available to the bank, the escrow agent, to wit, that the clearing account of Carlton Cambridge indeed had at all times the amount of their discount and allowances. In other words, they weren't buying stocks with their discount and allowances. Plus I'm certain the escrow agent would not have released the funds without the further checks in addition to those I have mentioned here. But I did --

THE COURT: When did that count take place by the bank?

THE WITNESS: About the 19th.

THE COURT: So as of the 12th of June, you did not know what the result of the count by the bank would be?

THE WITNESS: That is correct. Well, we didn't know but we had no --

THE COURT: It had not been counted.

THE WITNESS: It hadn't been counted. Of course, there was one letter which issued to the transfer company by Mr. Bowes, without consultation with me, and that was the June 21st letter, that the company had received the full proceeds and authorized the issuance of the shares. That is Mr. Bowes' independent conduct.

MR. JAFFE: Your Honor --

THE COURT: Just a moment. That company had what?

THE WITNESS: That company had received the full proceeds and there was authorization to issue the shares. There was the June 21st letter, if I may see it, please. I don't know what exhibit that is. Can I see that exhibit?

MR. JAFFE: Your Honor --

THE COURT: Just a moment, please. What exhibit is that?

MR. DERFNER: That is Exhibit 10, your Honor.

THE COURT: Thank you.

BY MR. BEIRNE:

Q Mr. Coven, I am showing you Plaintiff's 10 in evidence. I believe that is the letter you have been referring to.

MR. JAFFE: Your Honor, just to clarify the record at this point. I don't believe the count of the delivery certificates came until June 20th. I believe the underwriters delivered their list to the transfer agent on or about June 15th. I just felt these dates shouldn't get lost in the prospective of this point of the trial.

THE COURT: You are saying the total count?

MR. JAFFE: The counting may have been finished by the 19th, but I think it is important to note in the context of these questions the underwriters had delivered the full list of the names and the certificates and the amount of the certificates prior to that date, somewhere around, I believe, June 15th.

MR. DERFNER: Likewise, it is important to note the shares were not delivered nor was the money delivered from the escrow account until the 21st of June, your Honor.

THE WITNESS: Should I continue my answer, your Honor?

THE COURT: Just one moment. All right, go ahead.

THE WITNESS: Evidentally, since this is dated June 21, '72, at or about the time of the release of fund,

apparently Mr. Bowes knew or somebody contacted him, possibly the bank, I don't know why they would contact him. He wrote this letter without consultation and without our knowledge. That is the -- without my knowledge and my office's knowledge -- that is the letter of June 21st, "You are hereby authorized to issue 3,073,500 shares of our company's common stock, which we have received full consideration per the prospectus."

THE COURT: All right, Mr. Beirne.

Q You said you had no knowledge of that letter?

A No, I did not.

Q You did examine the transfer records, did you not?

A Yes, I did.

Q Did you reach a conclusion as to whether the closing should go forward or not?

A My conclusion was that 3,073,500 shares was sold on that transfer as subject to the bank's full account and the clearance of that Rega check.

Q The bank was counting Dennison Personnel stock which included stock in the street name; is that correct?

A Yes.

Q And the transfer records include stock in the street name; is that correct?

A Yes, which as I say, is not unusual.

Q Having reached the conclusion of slightly in excess

that three million shares had been sold, did you communicate this conclusion to anybody?

A I wrote a letter on June 13th, which was a letter which was taken by the bank conditional, subject to their counting and so forth.

Q But you didn't get the transfer record until subsequent to June 13th, isn't that correct?

A That is correct, subject to counting and other affirmations.

Q Did you write any supplemental letter?

A No. They called me back, incidentally, and told me there was a typographical error in that letter. In other words, the count was 3,073,500. I had 3,753,000, I believe.

Q Is it fair to say you concluded what you had said in the June 13th letter was now justified, so you took no further action?

MR. DERFNER: Objection, your Honor. It is irrelevant as to what Mr. Coven concluded with regard to the letter.

THE COURT: I will sustain the objection as to form.

Q He wrote you a letter which is an exhibit in evidence, on June 13th. On or about June 15th, you received the transfer records; is that correct?

A Right.

Q You examined the transfer record and concluded that three million shares had been sold; is that correct?

A From the transfer sheets it appeared that way.

Q Having made this conclusion on or about June 15th, going back to my original question, did you communicate your conclusion to anybody?

A No. It was subject to further counting and check-out by the bank. The bank's attorneys were well on top of this matter.

Q Did you learn the bank had counted three million shares?

A I learned that the issue could close when the bank informed me that I could pick up a check for $18,000, which was my fee, although not coming out of the escrow account.

Q So that it was the bank that was in control as to whether a closing would take place; is that correct?

MR. DERFNER: Objection, your Honor. That is not the testimony.

MR. BEIRNE: Your Honor, Mr. Coven previously indicated most of the restrictions and procedures were set up by him. Now he appears to be stating --

THE COURT: All right, overruled.

A This situation was discussed and arranged at the time of the closing.

Q And so after June 15th, did you issue any instructions as to whether the issue could finally close?

A No. Instructions to whom?

Q To anybody concerned in the offer.

A No, except that the bank called me and told me they had a proper count.

Q But you didn't do anything at that point?

A I didn't count the certificates, no.

Q And did you speak to Mr. Bowes at this point?

A I think Mr. Bowes not notified by the bank to pick up a check.

Q Did you have any conversation with him?

A I don't believe I did.

Q Did you ever ask him what he was going to do, if anything?

MR. DERFNER: Objection to form, your Honor.

A Going to do about what?

THE COURT: Sustained.

Q How did you find out that there had, in fact, been a closing?

A The bank authorized me to pick up the check. The bank authorized Bowes to pick up a check. Once they notified

me to pick up a check, there was a closing.

Q That is how you learned it?

A I called up the bank to find out or they called me -- I think I called them to find out whether it would be appropriate at that time to pick up the check which was lying in their hands for me subject to the completion of certain conditions.

THE COURT: Which check is that now? Do you mean your fee?

THE WITNESS: My fee was a contingent fee.

THE COURT: Or do you mean the Dennison --

THE WITNESS: Dennison Personnel had left a check at the bank.

THE COURT: When did Dennison get its check?

THE WITNESS: I believe the 21st or somewhere about that. They left the check in escrow. The check didn't come out of the escrow account. It was a check on some other bank and I was not authorized to pick up that check until various conditions were met.

THE COURT: Which check?

THE WITNESS: The fee check.

THE COURT: And that was the 21st?

THE WITNESS: I don't recall the exact date.

MR. DERFNER: Your Honor, the check that is being

referred to is part of Exhibit P-5. It is check number 5412, drawn on Dennison's ccount.

THE WITNESS: The check was dated June 12th. Bowes dated the check the date of the closing and left it with the bank.

THE COURT: What is on the back?

MR. HEGHMANN: It appears to have cleared the bank on June 23, '72, your Honor.

Q So, Mr. Coven --

MR. DERFNER: Your Honor, before we get into the question, I notice a notation of June 26, 1972, on this check. I don't see anything about June 23rd. Your Honor, I don't know what this means. I see two --

THE COURT: In any event, who does the record show so far, that no money was paid out until the 21st?

MR. DERFNER: That is correct, your Honor.

THE COURT: Would you mind showing the witness P-1, and I would like you to indicate where it is indicated how much money had to be in the escrow account before you can have a minimum closing.

THE WITNESS: When three million shares are sold, basically that means when good indications are received, not even money has to be received, that issue is effective. When three million shares are sold, unless three million shares are

sold, when three million shares are sold --

THE COURT: Page 4 of the prospectus under Dilution, in the middle of the paragraph, it says -- can someone hand the prospectus to Mr. Coven. It is a part of the introductory statement.

THE WITNESS: That would have nothing to do with the situation.

THE COURT: I am referring to, "for which they will have paid an aggregate cash consideration of 300,000."

THE WITNESS: That has nothing to do with it. What this dilution says, is that the public purchases will suffer a dilution in the value of the shares, that is, they pay X dollars for the shares and when they receive it, the tangible book value is less. These are hypothetical assumptions.

MR. BEIRNE: I don't necessarily agree it is irrelevant.

MR. JAFFE: Your Honor, if I may, on this one point, the $300,000 paid by the stockholders includes commissions and discounts to the underwriters.

THE WITNESS: In other words, stock is priced at an arbitrary amount of money, which is subject to agreement between the company. Let's say it is five dollars. When the customer pays five dollars, the position is only three, two

and a half, or what have you. That is what dilution is.

THE COURT: All right, go ahead.

BY MR. BEIRNE:

Q Mr. Coven, you also examined the escrow agreement as well as the prospectus, did you not?

A Right.

Q Do you recall what the escrow agreement provided with respect to the collection of $300,000?

A I would like to get a copy of it.

Q Mr. Coven, did you execute the escrow agreement -- I mean, did you draft it?

A That escrow agreement was drafted and sent to the bank for approval. Basically it is the banks' legal departments have the final word.

Q They have the final word, but your office drafted it; is that correct?

A Right.

Q I am showing you Plaintiff's 14 in evidence, and directing your attention to paragraph 2D. Will you read that paragraph and tell the Court what your contemplation of the meaning of that paragraph is, or was?

MR. JAFFE: Your Honor, I object. The agreement is in evidence and it speaks for itself.

THE COURT: Overruled.

A That has to be taken in conjunction with paragraph B; "In the event there shall not be 300,000 in the escrow account on delivery date," etcetera, "as a result of the fact that three million shares of stock were not sold on or before September 5th." And, B is more permissive and it indicates how the money is to be distributed if the funds in that account are sufficient to distribute that maximum amount, it provides the underwriters are to get $45,000, if the funds in the escrow fund is sufficient to provide that amount.

Q The funds were never sufficient to provide that amount, were they?

A It was sufficient to provide $255,000.

Q But not the other figure.

A Not the other figure, because he had deducted his discounts and commissions. It merely means the bank doesn't have to pay it out.

Q And of course, you say you determined that the underwriter had, in fact, collected the money but just deducted his commissions by the various steps that you testified to; is that correct?

A I determined that three million, at least three million shares had been sold. That was the signal sufficient to me that the beneficial interest in that escrow account there was more money in

the escrow account which belonged to the company than was required in the prospectus. The company got more money than was required to be paid to it under the minimum of the prospectus.

Q But of course, at the same time you issued a letter on June 13th, and then the next thing that happened was that you found out about the closing actually having occurred after the fact, isn't that correct?

MR. DERFNER: Objection, your Honor.

A That is not a true statement at all.

MR. DERFNER: I believe the form is defective.

THE COURT: I will allow it.

THE WITNESS: That is not true at all. What occurred is that letter is written after the closing and it is a conditional letter to the bank, at their request, subject to performance of other conditions.

Q But you wrote it before you looked at the transfer records and before the certificates had been delivered to the bank and before the bank had counted the certificates.

A That is right. It was a conditional letter.

Q And you did nothing in the way of --

A In other words, the bank wanted to know, basically, assuming that the shares were sold, how the distribution was to be made to the respective underwriters, for example, of

their commissions and discounts. Seggos was entitled to three thousand plus, and in addition, of course, the bank required Seggos, Stevens, Jackson & Seggos, to write them a letter and that was written to the escrow agent, I believe it is an exhibit here, on June 13th as well. What the bank went to confirm was how much, among other things, how much the various brokers were to get, Stevens, Jackson & Seggos in particular.

Q The bank required a letter from you and from the underwriters; is that correct?

A The bank required a letter from me, conditional letter from me; it required a letter from Stevens, Jackson & Seggos and I don't know what other papers they required from Carlton Cambridge, but they did require the paper which said they had deducted their commissionsand allowances, which was typed at the bank.

Q Did you tell the bank that your letter was conditional?

MR. DENNER: Your Honor, I believe the witness ought to be shown a copy of the letter.

Q I am showing you Plaintiff's 20 in evidence.

A The arrangement made at the bank was that the closing was subject to the conditions that I have outlined. This June 13th letter was accepted, or sent conditional upon

the accomplishment of the other matters which obviously could not be had by the 13th, subject to delivery of the shares, the escrow agent for full counting.

Q In the opening part of that letter, it says, "There were 3,075,000 shares of Dennison Personnel sold." Where is the condition?

MR. DERFNER: Objection, your Honor. Mr. Coven never testified that that statement was conditional. He said the letter was conditional. If Mr. Beirne wants to test that testimony, he should take the entire letter in its context, because I believe the letter speaks for itself as far as condition --

A The letter doesn't state --

THE COURT: I will sustain the objection.

Q Would you examine Plaintiff's 20, Mr. Coven, and tell the Court, if anywhere, it says that that letter is conditional.

A That is not my testimony, Mr. Beirne. I said that this letter was accepted by the bank conditionally, subject to the full counting of the shares, which by agreement, on June 12th, they were to receive directly, and the underwriters were denied access to it. That was my testimony.

THE COURT: Mr. Beirne, you are not suggesting the second sentence contemplated the transfer agent would

had some very bitter words with Mr. Bowes, epithets were pas and so forth and he wanted to settle up and get rid of this matter immediately on this closing. No opportunity was given to send him a bill and work it out. He just went to the sid there, worked it out and he said, "I want a $1,500 allowance on something and this is your out, I'm going to have it here."

MR. JAFFE: Your Honor, is "he" Mr. Bowes or who is "he?"

THE WITNESS: Mr. Bowes. In ordinary circumstance I would have billed him and so forth.

Q Mr. Coven, I believe you testified on direct that you have learned of Carlton Cambridge's entry into the pink sheets in Dennison toward the end of June; is that correct?

A June 29th.

Q And you learned it from whom, Mr. Caplin?

A Mr. Caplin.

Q I believe you further testified that you then spoke to Mr. Rega, and that it was at this point that you knew for the first time that the offering had been terminated is that correct?

A That is right.

Q What did you say to Mr. Rega when you called him on that occasion?

A I asked him whether he was trading the stock.

Q What did he say?

A He said he was trading the stock. He said that his trading might be considered stabilization. He told me that he had a cash position problem and that is the Securities & Exchange Commission [illegible], I think he will, sending questionnaires out and having a chilling effect on th stock.

Q This was the first time, though, that you realized the offering had been terminated; is that correct?

A That is correct.

Q Were you angry at Mr. Rega?

MR. DERFNER: Objection, your Honor as to whether Mr. Coven was angry.

THE COURT: Sustained.

Q Did you complain in any way to Mr. Rega that he hadn't told you this previously?

A Mr. Rega took the offensive. I asked him about his trading and so forth, and he is telling me the company might go down the drain since there is a Securities & Exchang questionnaire out and it has very chilling effects.

Q So that you felt it was more important then worrying about whether he had been informing you all along; is that correct?

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A These are your words, sir. I don't understand what that question means. Could you rephrase it?

Q No, I will just pass on, Mr. Coven.

Did you represent to Carlton Cambridge in any [illegible] after late June, when you had this conversation with Mr. Regis?

MR. JAFFE: Objection, your Honor.

MR. BEIRNE: Your Honor, I am attempting to examine the reliability of Mr. Coven's ascertain that he learned for the first time that Mr. Rege had not been keeping him fully informed.

THE WITNESS: I didn't say that, sir. I said I learned for the first time Mr. Rege was trading the stock on June 29, 1972. I learned that from a telephone call, from Mr. Caplin.

THE COURT: Just a moment. May I hear your objection?

MR. JAFFE: Your Honor, I was objecting to any testimony with respect to his representation on Carlton Cambridge after June 29th, your Honor. That is what I thought the question was being directed at.

MR. DERFNER: Your Honor, my objection goes to the fact Mr. Beirne is once again trying to get into collateral areas, I believe for purposes of prejudicing Mr. Coven. I

think there is no question that these may be sensitive and prejudicial areas. It is beyond the scope of direct examination. I acknowledge Mr. Beirne's right to probe Mr. Coven's testimony, but that right must stop short of collateral areas and prejudicial areas. I believe that is what he has embarked upon. And, your Honor, these subjects have brought up before, Mr. Beirne asked this before, and I have objected before, and it has been sustained and he nonethless persists in this line.

THE COURT: Yes, but I think the question may be allowed now. He hasen't asked what he represented him for or what were the matters about. I will allow the question. I think the question is after June 29th -- what is the question Mr. Beirne?

Q After June 29th, did you represent Carlton Cambridge in connection with any public offerings?

A I believe I was on issue called analytic --

THE COURT: You don't have to tell us what.

THE WITNESS: I believe I was on an issue for a few days, and then something later, when Rega was out of Carlt Cambridge, I appeared for them in a law suit, momentarily --

MR. DERFNER: The question, your Honor, related to public offering.

Mr. JAFFE: Your Honor, if I may renew my objection

the question was, did he ever represent Carlton Cambridge after June 29th, and now there is a broader period. I think the relevance, as I understood the question originally, it was argued to what Mr. Rega was telling him during a certain period of time.

THE COURT: I will strike the reference to any representation of Carlton Cambridge after Mr. Rega had left. Your question is related to Mr. Rega essentially. The answer is --

THE WITNESS: Basically I only know of one issue for a very short time; a week, ten days.

MR. DERFNER: At this time can we get the approximately date of that, your Honor?

BY MR. BEIRNE:

Q Would you give the date, Mr. Coven?

A I really don't know. May I step down? I may have --

THE COURT: Yes.

A (Continuing) My memory is refreshed by looking at -- it was about December 29, 1972.

THE COURT: I am going to reverse my ruling, Mr. Derfner. I will allow the question as to whether or not Mr. Coven was angry at Mr. Rega on June 29th. Before we got into this, what is the answer new?

THE WITNESS: December 29th, based upon the ordinary prospectus.

THE COURT: That is the last time you represented Carlton, while Rega was there?

THE WITNESS: To the best of my recollection.

MR. JAFFE: Your Honor, was that the last time or the next time, your Honor. I think that is important.

MR. BEIRNE: It is the one he remembers.

THE WITNESS: I think that was probably the next time. That only lasted for a few days.

Q Mr. Coven, would you answer the question as to whether you were angry at Mr. Rega when you learned of the trading on June 29th?

A I was upset.

Q Did you express this to Mr. Rega?

A I believe I did.

Q Do you remember what you said to him?

A I think I asked him if he was out of his mind.

Q What did he say, do you remember?

A He came back with an offensive, "Never mind that, we have other problems."

Q Did he consider you his attorney that you should worry about this problem?

MR. DERFNER: Objection, he is asking for the

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operation of Mr. Rega's mind.

THE COURT: Yes.

Q I believe you testified that when you learned of Carlton Cambridge being in the sheets, that that signaled to you the end of the offer.

A He mentioned stabilization, but in light of no reports had been filed.

Q Did the entrance of Carlton Cambridge, one of the underwriters in the pink sheets, signal the end of the offering as far as you were concerned?

A I think that it was legal. When the underwriter goes into the sheets, then the offering is terminated.

Q So that it is different from M. S. Wien being in the sheets; is that correct?

A That is correct. Anybody else could have gone into the sheets except Carlton Cambridge and Seggos.

MR. DERFNER: Your Honor, I would like to return to the area of Mr. Coven's representation of Carlton Cambridge subsequent to June 29, 1972. You had stricken his answer as it didn't relate to Mr. Rega or when it related to the time after Mr. Rega had left Carlton Cambridge. As I review my notes, I recall Mr. Rega left Carlton Cambridge in November of '72. Mr. Coven testimony was he represented Carlton Cambridge on the other issue in December of 1972 and, therefore, I

submit that should also be stricken.

THE COURT: My understanding is Mr. Coven has testified that he represented Carlton next, next meaning learning from Rega that Carlton was trading Dennison share he represented Carlton next on that date.

THE WITNESS: No, December 29, 1972. It was December 29, 1972.

THE COURT: So your application is what now?

MR. DERFNER: That any reference to this representation of Carlton Cambridge after Mr. Rega left Carlton Cambridge is irrelevant and should be stricken.

THE COURT: Do you want to be heard on that?

MR. JAFFE: Yes, your Honor.

THE COURT: All right.

THE WITNESS: I'm glad your Honor brought that up. That is a very serious statement.

THE COURT: All right, Mr. Jaffe.

MR. JAFFE: From what I saw, at least the preliminary prospectus dated December 29, 1972, I do not know when that prospectus had additional filing or when Mr. Coven' representation of Carlton may have been initiated when Mr. Rega was there or not. I believe it is significant there may have been additional representation. In the content of the question your Honor allowed was he angry at Mr. Rega. I

believe the fact that there is a prospectus December 29, 19 is not indicative -

THE COURT: As to when the representation commenced.

MR. JAFFE: Right.

THE COURT: Do you want to pursue that?

THE WITNESS: It was about that time because it only a few days on that issue.

MR. DAVIS: I would like to ask the material not be stricken for the reason that it is certainly relevant, whether brought out here or some other method, certainly relevant in the question of successorship since it appears Carlton Cambridge was underwriting a new issue subsequent to the time of the transactions.

MR. DERFNER: Your Honor, if pursuant to Mr. Davi application, I would have no objection to that testimony bein admitted solely for the purpose of successorship on Carlton Cambridge, but not as against Mr. Coven representing Carlton Cambridge.

MR. BEIRNE: There is one problem with that, your Honor. We are going to go down a long road because that will put me possibly in the position of getting into whether Carlton Cambridge was capable of really functioning as an underwriter in that offering and so on, so it may not be a

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good idea.

MR. DAVIS: I don't believe so. It is simply a fact which has been brought out on cross examination. I would prefer to have that remain in the record. I don't think this witness can testify as to Carlton Cambridge's capabilities or lack of capabilities and so forth as it pertains to the record. I don't object to it. I by no means believe that it meant an kind of thorough examination by Mr. Coven at that time.

THE COURT: Mr. Coven, in connection with this other issue, which has, as I understand it, a prospectus date December 29, 1972, did you work with Mr. Rega, in connection with that matter, before he left Carlton Cambridge?

THE WITNESS: No.

THE COURT: You did not?

THE WITNESS: No. This is an issue which was way after Dennison, when Dennison's time fully expired.

THE COURT: And after Rega had left?

THE WITNESS: I can't tell you when he left, your Honor.

THE COURT: You did not work with Rega?

THE WITNESS: I didn't work with Rega. Gamaridis.

THE COURT: To the best of your knowledge, Mr. Rega had no involvement with this particular matter?

THE WITNESS: None whatsoever.

THE COURT: I will grant the application to strik that.

BY MR. BURNE:

Q Mr. Coven, did you give Carlton Cambridge any underwritings after June 30th and before November of '72?

MR. DeFILIPPIS: Objection only to the form as it relates to give --

A You mean did I show them?

THE COURT: All right, change that.

Q Did you recommend Carlton Cambridge to any issuer as underwriters?

A I would have to take a look.

THE WITNESS: May I have a moment, Judge, I'll return in just a moment.

THE COURT: We will recess at this point and resume at two.

(Luncheon recess at 12:45.)

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AFTERNOON SESSION

2:10 p.m.

THE COURT: All right, proceed.

CROSS EXAMINATION CONTINUED

BY MR. BEIRNE:.

Q Mr. Coven, before we broke for lunch, I believe I had asked you whether you had recommended Carlton Cambridge as underwriter to any issuers between June 29, 1972, and November of 1972. Do you remember if you recommended any issuers or directed them to Carlton Cambridge during that period?

A I may have had an issue with them, but I don't recall recommending it.

Q When you say you may have had an issue with them, what do you mean?

A The only issue that comes to mind is an issue called Aztec Products. I didn't recommend that to Carlton Cambridge. I was the attorney.

Q Carlton Cambridge was the underwriter; is that correct?

A Right. I don't know the dates of the issue. I think it became effective in '73. I'm not certain of that.

MR. BEIRNE: Your Honor, I would like to have a Commission official public file No. 24 in Y7692 deemed marked

for identification as Plaintiff's No. 113.

THE COURT: All right.

(Plaintiff's Exhibit 113 deemed marked for identification.)

MR. BEIRNE: This file is the official public file in connection with the offering of a stock called Aztec Products, Inc.

Q I am showing you that file, Mr. Coven, and specifically the consent and certification by the underwriter, signed by Mr. Rega, in connection with that offering. Does that refresh your recollection as to approximately when that offering was being worked on or was being prepared?

MR. DERFNER: Objection, your Honor. The question was originally, did Mr. Coven recommend Carlton Cambridge and the answer was no, and he had no recollection when it became effective. The relevant question was, did he recommend --

THE WITNESS: I didn't recommend the issue to Carlton Cambridge.

THE COURT: As I understand the answer, the answer was that he did not recommend Carlton to the issuer but he was the attorney for the issuer and the issuer did use Carlton as an underwriter.

MR. DERFNER: That is correct, your Honor.

THE COURT: I will allow the question.

A The issue became effective February 5, '73, and was worked on during the July '72 period. However, I didn't recommend this issue to Carlton Cambridge.

Q That consent by Mr. Rega that I referred your attention to, what is the date on that?

A July 17, '72 -- July 31, '72, received.

Q The July 17th date, that is the same date of the deregistration amendment in connection with Dennison, is it not?

A Yes. I had no connection with it whatsoever. I don't believe I was working on this particular issue presently.

Q You testified on direct with respect to the deregistration, and your conversation with Mr. Bowes in connection with deregistration. Did you ever inform Mr. Bowes that Carlton Cambridge had started to make a market in the stock of Dennison Personnel?

MR. DERFNER: Objection, your Honor, to the form, unless it is clarified as to the time of the conversation.

THE COURT: All right.

MR. BEIRNE: I will withdraw the question.

Q You learned that Carlton Cambridge was making a market in Dennison on June 29th; is that correct?

A Yes.

Q At any time subsequent to June 29th, did you

inform Mr. Bowes of that fact?

A Mr. Bowes responded to the message I left with h with his office, on June 29th or 30th, that the issue had to deregistered. He was told the reason for it. The stock wa trading.

Q You told him that the stock was trading?

A Yes.

Q Did you tell him that Mr. Rega had not previously informed you that the stock was trading or that he would trad the stock?

A Read it back.

(Question read.)

A No. I told him in substance the stock is trading and the issue is over.

Q And you further told him that the issue had to be deregistered?

A Yes.

Q This was subsequent to your conversation with Mr. Rega in which you learned that the SEC was investigating, is that true?

MR. JAFFE: Your Honor, may I have the question.

THE COURT: Read it back.

(Question read.)

MR. JAFFE: My objection goes to the vagueness of

investigating what.

THE COURT: Investigatin Dennison.

A Apperently there was no formal order of investigation at that time, although I didn't know it at that moment.

THE COURT: Is that correct?

MR. BEIRNE: Yes.

THE COURT: Why don't you withdraw the question.

MR. BEIRNE: I withdraw the question.

Q I believe you testified, Mr. Coven, when you spoke to Mr. Rega, after you learned that Carlton Cambridge was in the sheets, that Mr. Rega informed you that there were more serious problems in that the SEC was investigating; is that right?

A Sending questionnaires out.

Q And it was after this conversation that you informed Mr. Bowes of the need to deregister the remaining portion of the issue; is that correct?

A No. The next thing I did was call up Mr. Glurbon of the Securities & Exchange Commission.

Q Then when for the first time did you advise the issuer that the remainder of the Dennison stock had to be deregistered?

A I left a message to inform Mr. Bowes that the issue had to be deregistered. It had nothing to do with my

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conversation with Mr. Glusband. It had to be deregistered because Carlton Cambridge was trading. Mr. Glusband told me in substance this was an usual surveillance. I suggested to Mr. Glusband I would bring my client down immediately to answer any questions he wanted. I also thought this was a continuation of the SEC comment and --

THE COURT: I am going to ask, Mr. Coven, that you try to answer only the question put to you, just the specific question put to you. Go ahead.

Q In any event, the message you left for Mr. Bowes to the effect the issue had to be deregistered, this occurred after you had spoken with Mr. Rega and had been informed that the SEC had been sending out questionnaires; is that correct?

A That is correct.

Q You mentioned that Mr. Bowes made various proposals as to what might be done under the circumstances, other than deregistration; is that correct?

A Made one proposal.

Q What was that?

A That the issue -- that the balance of the issue be sold at market by a new underwriter.

Q Did you have anything to do with the suggestion that a new underwriter be sought?

MR. DERFNER: Objection, your Honor, as to form.

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MR. BLIRN: I withdraw it, your Honor.

Q Isn't it a fact that you suggested to Mr. Bowes that attempts be made to find a new underwriter?

A No. As a matter of fact, on Mr. Bowes' Board of Directors -- may I have the Dennison Personnel prospectus, please.

Q Are you saying you want that prospectus in order to answer the question --

A I want to indicate that Mr. Bowes had on his Boar of Directors, advising him, I assume, the following gentlemen He had Mr. Alfred F. Watt, who was employed by the Wall Street firm of DeCappet & Deremus, after some forty years of service, and during this period, the Association of Stock Exchange Firms appointed him Chairman of Employment, and John H. Kraven, the founder of John Kraven and company, registered broker dealer. Mr. Kraven served with the New York Stock Exchange as vice president and general manager of the clearing corporation.

Q Are you saying the suggestion come from these gentlemen?

A I am suggesting Mr. Bowes made this statement to me and I didn't make it to him and he had ample background and advisory personnel from whence to obtain such an idea.

Q Mr. Bowes hadn't made suggestions of this type

before, had he?

MR. DERFNER: Objection, your Honor, "suggestion of this type."

Q Suggestion as to how the offering should be conducted, and what steps should be taken. He hadn't done that previously, had he?

A Mr. Bowes did state he new many underwriters, services of many underwriters and had ample contacts in the street.

Q But the underwriters chosen were Seggos and Carlton Cambridge, isn't that correct?

A Yes. Carlton Cambridge, in my mind, was the finest underwriter at that time.

Q Mr. Bowes had nothing to do with choosing them, did he?

A No, he didn't.

Q And he hadn't previously made any suggestion as to how the underwriting should be conducted, had he?

A In what sense?

Q Isn't it fair to say that Mr. Bowes had gone along with whatever proposals you made with respect to how the offering should be conducted?

A I didn't make any proposals as to how the offering was to be conducted. As I recall the testimony here, Mr. Ziff

made frequent visits to Mr. Bowes and Mr. Bowes furnished Mr. Ziffer with customers.

Q Didn't you inform Mr. Bowes of the change in underwriters, let's say, from Lehman Bartels to Stevens, Jackson & Seggos?

A Yes.

Q Didn't you inform him of the change in price from five dollars to ten cents?

A Yes.

Q Didn't you inform him when Carlton Cambridge came into the picture?

A Yes.

Q And he didn't question that, did ne?

A He didn't interfere.

Q But now, when --

A However, Mr. Bowes did check out on each one of these occasions before he gave his consent.

Q In July, though, Mr. Bowes suggested finding an underwriter rather than following your advise, is that what you are saying?

A Mr. Bowes didn't want to deregister these shares. He was trying in every way to avoid doing that. He offered me $5,000 more in compensation if I could so something with relation to his suggestion.

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them subsequent to Dennison with regard to another escrow account, and your Honor ruled that that was not relevant and my objection was sustained.

THE COURT: This time I am going to overrule your objection. On the question of the witness' testimony on direct as to conduct of affair with respect to these matters, following Dennison. Go ahead.

A Republic National Bank had appeared on several other issues but they were taken off and no closing was ever held with Republic National Bank as escrow agent after Dennison Personnel. The next closing, I believe, was Aztec or Melbourne, and in each instance one hundred percent, every dime of funds received were placed into the escrow account and no underwriter was permitted to deduct any commissions, discounts, allowances, and that was with Melbourne Equities and Aztec.

MR. JAFFE: I would like to make a motion to strike that if it involves my clients.

THE COURT: First let me see what the answer is. You have mentioned two additional issues.

THE WITNESS: I have never closed an issue since Dennison Personnel where I have permitted the underwriter or anybody else to take any discounts or allowances. The full gross amount has been placed in the escrow account.

MR. BEIRNE: I can give my recollection.

THE COURT: The year of the trial.

MR. BEIRNE: It was 1971, your Honor.

THE COURT: Do you recall that as being the year of the trial, 1971?

THE WITNESS: It was a long period of time. I don't recall the year. I will accept somebody's word for it, but I don't recall.

THE COURT: I will check the date and take judicial notice of what was reported as having occurred. The offer, I gather, is related to that portion of the testimony on direct in which the witness indicated with respect to the future, and Mr. Derfner makes the objection that this case occurred in 1971, and before the Dennison issue was effected, and I suppose you in turn take the position what may be expected for the future, this bearing on the application for relief, which has to be related to events in the recent past. Is that what you are saying?

MR. BEIRNE: I think the date of Manor is a point in favor of the offer because I wouldn't expect Mr. Coven to act differently in Dennison if there hasn't yet been a decision in Manor. I am suggesting he was cognizant in the law laid down in Manor, and --

MR. DERFNER: My objection goes beyond the date,

your Honor. My objection goes as to, was Mr. Coven trial counsel in Manor. I submit that is not relevant to Mr. Coven's position that he has adopted certain standards regarding escrow closing. Irrespective of its issue --

THE COURT: Are you limiting yourself now to escrow matters?

MR. BEIRNE: Yes, your Honor, my purpose is the escrow situation.

THE COURT: Then I think I will sustain the objection because I do believe, I recall that the situation there was different in certain significant respects. The escrow situation was different in certain respects. I will sustain the objection.

BY MR. BEIRNE:

Q Mr. Coven, you testified on direct that Mr. Bowes had asked you, I believe, to sign the deregistration amendment as his agent; is that correct, and that you refused to do so?

A No, I didn't say that. I said that Mr. Bowes called me back, requested, told me that I should sign the deregistration statement as agent for services of process. That is a technical term appearing on the front cover of the registration. This being agent for service of process would permit an agent to deregister an issue.

Q You didn't want to sign; is that correct?

A Yes, they--

Q Do you recall that, sir?

A Yes, I do.

Q Sir, do you also recall testimony that you gave regarding the fact that Dennison Personnel received a properly executed copy of that letter of intent?

A Yes.

MR. DERFNER: May I have this marked for identification?

(Defendant Coven's Exhibit D-26, marked for identification.)

Q Mr. Coven, I show you a copy of D-26 marked for identification and ask you if you can identify it?

A Yes.

Q What is it, sir?

A A letter of intent dated June 30, 1971, signed by Jack Lehman, III, a principal of Lehman, Bartels, and this was the letter of intent which was delivered to me in the presence of Mr. Bowes on June 30, 1971, in my office.

Q Does this letter of intent relate to the Dennison public offering?

A Yes, it does.

MR. DERFNER: I will show it to plaintiff, your Honor, and other counsel and offer it in evidence.

THE WITNESS: Let me correct that date. July 2nd, that was delivered. It is dated June 30th and delivered July 2nd.

MR. BEIRNE: May I ask a couple of questions on voir dire?

THE COURT: Yes.

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VOIR DIRE EXAMINATION

BY MR. BEIRNE:

Q Mr. Coven, D-26 for identification, where had that been for the last two years?

MR. DERFNER: Objection to the form of the question, your Honor.

THE COURT: Just a moment. You have offered it?

MR. DERFNER: Yes, your Honor. I have no objection to the subject matter. Only to the form of the question.

THE COURT: I don't see the basis for your question, Mr. Beirne.

BY MR. BEIRNE:

Q Mr. Coven, you brought that document with you here today, is that correct?

A I did.

Q And where did you get it from?

A My office.

Q Has it been in your office, let's say, for the last year, do you know?

A I moved my office in May of '72. Incidentally, sir, this documental match in every particular respect, interlineation in the typewriter of the document signed by Mr. Bowes. It is a genuine document.

Q Except for the fact it is not signed by you as the other one is.

A That is correct.

MR. DERFNER: Your Honor, one point I would like to clarify here. I believe Mr. Coven was incorrect as to the year of moving his office. You stated May, '72, Mr. Coven.

THE WITNESS: May, '73 I moved my office.

Q Regardless of the location of your office, that document has been in your files since it was executed, is that correct?

A That's correct.

Q To your knowledge, was that document or a copy of it given to Mr. Bowes?

A Mr. Bowes received a copy of this document in the usual fashion. Lehman, Bartels & Company gave one to us, and Mr. Bowes gave one to them. This was done July 2, 1971. It's dated June 30th. This document confirms in every

interlineation, typing, precisely with the document that you have in your hand there that I signed by mistake.

Q Do you know whether Mr. Bowes received a copy--

A Yes, he received it.

MR. DERFNER: Your Honor, I submit these questions are not proper subject for voir dire.

MR. BEIRNE: I am attempting to determine the relevance of this document as to whether it was ever received by anybody other than Mr. Coven.

MR. DERFNER: I don't believe that is proper for voir dire, your Honor.

THE COURT: Just a moment, please. Not on voir dire. Sustained.

Now, there is an outstanding offer of this, which is marked 26 for identification. What is the position of the plaintiff?

MR. BEIRNE: Your Honor, we will object to the introduction of this document on two grounds. First of all, we don't know anything about the signature which purports to be the signature of somebody from Lehman, Bartels.

Secondly, we don't know that Mr. Bowes received a document with the signature of the person that signed this particular copy.

THE WITNESS: This was signed in my presence and--

MR. DERFNER: Mr. Coven, please.

THE COURT: You say you object first on the ground of authentication?

MR. BEIRNE: That's correct, authentication and resemblance, your Honor.

MR. DERFNER: Your Honor, if I may address myself to the second objection first. As to relevance it was the plaintiff over my objection who inquired at length of Mr. Coven with regard to the Lehman, Bartels letter of intent and I believe that their offer of proof was--I withdraw that--but I believe the purpose of that was to show that Mr. Coven's statements that Mr. Bowes received a properly executed copy of this letter of intent were not entitled to any weight and to raise various and sundry others irregularities in this issue.

We submit, your Honor, this goes counter to that and supports Mr. Coven's testimony on cross examination that Mr. Bowes received a properly executed letter from Lehman & Bartels.

With regard to the first objection, which is authenticity, I would state, your Honor, perhaps a few more questions on this document, a few more answers by Mr. Coven, maybe dispositive of that.

BY MR. DERFNER:

Q Mr. Coven, are you familiar with the signature of Mr. Jack Lehman III?

A Yes. Jack Lehman--

Q Just yes or no.

A Yes.

Q Sir, did you state that this document was signed in your presence by Jack Lehman, III?

A Yes, it was and in the presence of Mr. Bowes.

Q Is this Mr. Jack Lehman,III's signature?

A Yes, it is.

Q Did you see him put that signature to that document?

A Yes, I did.

MR. BEIRNE: Authentication is no longer a question, your Honor. It does leave relevance in that I don't believe there is any evidence that a copy with this signature on it was at any time shown to Mr. Bowes or delivered to Mr. Bowes.

MR. DERFNER: There was testimony it was signed in Mr. Bowes' presence and Mr. Bowes got a copy.

THE COURT: Is that your testimony?

THE WITNESS: Yes.

THE COURT: All right, received.

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(Defendant Coven's Exhibit 26, received in evidence.)

MR. DERFNER: Your Honor, that document does not appear on the pretrial order and there is an explanation for that and I also do not have copies for the Court and counsel for this and there is an explanation for that too, if the Court is interested.

THE COURT: Maybe you can explain to me once again, this is offered for what purpose?

MR. DERFNER: This is offered to rebut the cross examination of Mr. Coven by the plaintiff on the issue of the original letter of intent signed erroneously by Mr. Coven, which was received in evidence, offered in evidence by plaintiff and received, and Mr. Coven didn't testify to this on direct examination.

On cross examination he was extensively examined on this and this is corroborative of his testimony that there was a properly executed letter of intent and that Mr. Bowes did receive the same.

THE COURT: All right, go ahead.

BY MR. DERFNER:

Q Now, Mr. Coven, do you recall on cross examination the questions by Mr. Beirne, with regard to the law firm of Stanger & Robson, to the effect that they appeared as

counsel to Lehman, Bartels without the permission and consent or consultation by yourself with that law firm?

A Yes, they--

Q Do you recall that?

A Yes, I recall that cross examination and the intimations of it.

Q Do you recall Mr. Beirne's questions, wasn't it a fact Mr. Robson had never given his consent to that issue?

A Yes.

Q I show you Defendant's Exhibit D27 for identification and ask you if you can identify that?

A This is a letter from Morton S. Robson in connection with Dennison Personnel, Inc. dated November 22, 1971 together with a copy and envelope postmarked,--

Q Is that letter signed?

A Yes.

Q To whom is it addressed?

A Mr. Bernard Coven, 250 West 57th Street.

Q Is this an original or--

A This is a copy.

Q Did you make this copy?

A Yes. I have the original in my office.

MR. DERFNER: I show Exhibit D27 to counsel

for plaintiff and other counsel and ask it be admitted.

If there are no objections, I will offer it in evidence.

MR. BEIRNE: Your Honor, I object on the ground of relevance. It is true I asked a question on cross examination and it is further true that Mr. Coven testified what I was suggesting was not his recollection, etc. And his testimony is at this point uncontradicted. I don't believe thatmakes this document relevant.

MR. DERFNER: Your Honor, if I may, I am shocked to hear Mr. Beirne speak that way. I believe he made various representations with regard to Mr. Coven's veracity and credibility as a witness.

He asked the Court to allow him a lot of leeway and in some degree the Court allowed him leeway in testing Mr. Coven's credibility. This is supportive of his credibility and dispositive of the issue raised by the plaintiff and not by us that Mr. Robson was put on the issue of Dennison Personnel without Mr. Robson's consent and--

THE COURT: I don't see that there is any evidence to the contrary. What is there to offset? The plaintiff apparently anticipated or at least the answers they got didn't separate the propostion asserted by the plaintiff.

notices to the company. The underwriting provides all notices go to the company.

Q Sir, referring specifically to paragraph 7 of the underwriting agreement, I ask you to read the last part of the last sentence of that paragraph, sir.

A "The underwriters should have the right to terminate their obligation under this agreement forthwith by written or telegraphic notice to the company."

Q Sir, in your capacity as counsel to the issuer, did you receive any written or telegraphic notice from Carlton Cambridge, Stevens, Jackson & Seggos, stating they wished to terminate their underwriting agreement?

A No.

Q To your knowledge did Dennison Personnel receive such notice?

A No. All notices were to be sent to the company and the company never notified me.

Q Did Mr. Bowes state he received such notice from the underwriters?

A No.

Q Is your statement, sir, all notices were to be sent to the company predicated on paragraph 9--

A Yes, that all notices pursuant to the agreement in the case of the company shall be sent to the company at

32 Broadway, New York , New York 10017.

Q You were never informed by Mr. Bowes or anyone else that these notices were received by the company, is that correct?

A That's correct.

THE COURT: Did there come a time when you did draw a conclusion that the maximum was no longer being offered?

THE WITNESS: Yes, on June 29th, when I received notice of Carlton Cambridge Trading in this issue. That was the signal that the issue was in a position that it could no longer be offered. Between the period of June 12th to June, your Honor, it took until the 21st to determine if the minimum was effective and it was only a few days after that, to the 29th, that it came to my attention.

Q Mr. Coven, I am showing you a copy of Exhibit D 21 in evidence.

MR. DERFNER: Your Honor, I made a copy for the Court's convenience.

(Handed to the Court.)

Q I ask you, sir, to look at the second part of that exhibit, which is the letter dated June 21, 1972.

A It's dated June 1st.

Q I'm sorry, June 1, 1972, that's correct. Do you

Q Did there come a time when you received the transfers?

A Yes, sir.

Q Did there come a time thereafter when you had a conversation with Republic National Bank relative to Dennison Personnel?

A Yes.

MR. BEIRNE: Your Honor, at this point may I interrupt, I believe in the last discussion with the escrow agent Mr. Coven didn't identify the individual.

Q Mr. Coven, do you recall with whom you spoke on that occasion which you have just testified to?

A I believe it was Hirsch or Leitel. He was the attorney for the bank.

Q Morris Hirsch?

A Yes, or Leitel. He was the attorney for the bank.

Q Did there come a time, sir after you received the transfer list when you had a conversation with someone from Republic National Bank relative to Dennison Personnel?

A At the time I picked up the check, yes.

Q Do you recall with whom you had a discussion?

A That conversation was with Mr. Hirsch, I belie

Q Did you have any discussions prior to the time

A I didn't feel it was necessary to alarm Mr. Bowes. My preliminary examination indicated that Seggos was in ratio and subsequent auditing indicated that he was in ratio, the SEC's examination of the books indicated he was in ratio, and I saw no reason to alarm Mr. Bowes.

Had he not been in ratio, he certainly would have been notified.

Q Mr. Coven, when you left the meeting on June , 1972, at Republic National Bank, were there any discussions between you and the escrow agent relative to when the escrow funds could or should be released?

A Yes.

Q What did you say to the escrow agent in that regard, sir?

A I told him that I would direct the transfer company to send up the shares to the escrow agent for physical counting, and that I would send him a letter of June 13th, they asked for that letter, as to how funds were distributed in the event that the number of shares were properly checked out.

Q Was there any discussion as to what would be required prior to releasing the escrow fund, sir?

A Satisfaction on both my part and the bank's part that at least three million shares were sold.

MR. JAFFE: I meant redirect at all times, your Honor.

Q You did have some communication with the underwriters between the period June 12th to June 29th, is that true?

MR. DERFNER: Objection, your Honor, that was not testified to on redirect. On redirect Mr. Coven testified he had no conversations with the underwriters relative to Dennison in that period of time.

MR. JAFFE: I only asked if he had any communications between the underwriters between the period June--

THE COURT: Do you want to put in in that form? Did you?

THE WITNESS: Yes.

Q At any time during those communications did you remind them of their obligation to sell additional shares of Dennison Personnel under the underwriting agreement?

A No, I didn't remind them.

Q Did you speak about their obligations?

A No, I never would do that.

MR. JAFFE: No further questions, your Honor.

MR. BERGER: I have no questions, your Honor.

MR. JAFFE: Your Honor, in those last various questions I used the word "obligation," which is Mr. Coven's